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L. S. Trent

CODE OF LAWS
OF
SOUTH CAROLINA
1952

IN EIGHT VOLUMES

ANNOTATED

Prepared under the supervision and direction of the
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VOLUME 7

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Constitution

of the

United States of America of 1787

and Amendments

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Preamble.

WE THE PEOPLE of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.¹

ARTICLE I.**§ 1. Legislative powers.**

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Domestic insurance companies may be excluded from tax.—Where Congress passed an act giving the states full authority to regulate and tax the business of insurance, a statute taxing foreign insurance companies

and not domestic insurance companies is not violative of this provision. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

§ 2. House of Representatives; how constituted; power of impeachment.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

1. The headings appearing in boldface type have been inserted in this reprint of the original Constitution. The arrangement, except for capitalization and spelling,

follows the arrangement of the reprint contained in the Constitution of the United States (4th ed., 1948), published by the Library of Congress.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

[Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.]² The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ 3. The Senate; how constituted; impeachment trials.

[The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.]³

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; [and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.]⁴

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

2. See 14th amendment, § 2, and 16th amendment.

3. See 17th amendment.

4. See 17th amendment.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

This section resembles S. C. Const., Art. 5, §§ 2 and 3.—This section bears a striking resemblance to S. C. Const. of 1868, Art. 4, §§ 2 and 3 (now S. C. Const. of 1895, Art. 5, §§ 2 and 3), so much so that we are unhesitatingly led to believe that the framers of our State Constitution intended to organize a Supreme Court upon the model of the Senate of the United States as to classification of its component parts and their periodical rotation, and also as to the mode of perpetuating the scheme by providing elections to fill vacancies in unexpired terms. *Simpson v. Willard*, 14 S. C. 191 (1880).

It has been given but one construction.—All that we design to show is the fact that this section of the Constitution of the United States, so analogous in its phraseology and provisions to our Constitution, has never received by any legislative body, State or national, nor by any learned commentator on constitutional law but one exposition. That is that the terms of office of the three classes of senators must follow each other in duration and end in regular order of rotation and periodical succession, and can never, by election to fill unexpired terms and casual vacancies, be so deranged as to destroy this sliding scale. *Simpson v. Willard*, 14 S. C. 191 (1880).

Original division of Senators is fundamental law.—The original division of Senators into three classes, to enter and to depart at stated periods in regular rotation, is a fundamental feature of the organic law, intended to be a continuing and perpetual feature of the Senate so long as that august body lasts. This succession of entry and departure by the classes of

Senators cannot be interfered with nor deranged by any action, either executive or legislative, State or Federal. Hence, in every instance, under the Constitution, of an election of a Senator to fill a vacancy created by the death, resignation, or removal of an incumbent before the expiration of his term, the Senator-elect has only held until the expiration of the unexpired term which he was chosen to fill, and no longer. It is needless to say that by no other construction could the original, leading, fundamental scheme of rotation of classes be maintained. *Simpson v. Willard*, 14 S. C. 191 (1880).

Intended to be perpetuated.—That this scheme of rotation of Senators should be maintained and perpetuated was evidently the leading design and main object of the framers of the Constitution; and, being so, all minor provisions must be construed to be subordinate and subservient thereto. The supplying of vacancies in unexpired terms is incidental to the preservation of an existing term of office, and hence must be so conducted and carried out as not to derange, but to preserve this fundamental and leading design of succession and regular rotation. As state after state has been admitted into the Union, two Senators from each have been chosen by the legislature, invariably for the term of six years. But immediately upon entering that body they have each, by lot, been cast into one class or another of the three divisions of Senators, and their respective terms of office have been made to conform to that of the class to which lot had assigned them. *Simpson v. Willard*, 14 S. C. 191 (1880).

§ 4. Election of Senators and representatives.

The times, places and manner of holding elections for Senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.⁵

Quoted in *Smith v. Blackwell*, 115 F. (2d) 186 (1940).

§ 5. Quorum; journals; meetings; adjournments.

Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 6. Compensation; privileges; disabilities.

The Senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

“Privileged from arrest” means freedom from civil process.—The words “privileged from arrest” as used in this section mean freedom from service of any civil process. These are the words of the common law of the mother country. *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

And these words must be liberally construed.—A liberal construction must be given to these words upon principle and reason. It is just as necessary for the protection of the rights of the people that

their representative should be relieved from absenting himself from his public duty during the session of Congress for the purpose of defending his private suits in court as to be exempt from imprisonment on execution. If the people elect an indebted person to represent them, this construction of the Constitution must also be made to protect his rights and interests, although it may operate to the prejudice of his creditors. But the claims of the people upon his personal attendance are

5. See 20th amendment, § 2.

paramount to those of individuals, and they must submit. *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

Public policy demands this privilege.—Public policy, as well as the Federal Constitution, demands that these gentlemen, who are elected by the people as their representatives in the lower house of Congress, shall not be harassed by civil suits while Congress is in session, and also for a reasonable time in going to and returning from Washington. *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

Which is similar to that of member of Parliament.—The privilege of a member of Congress is the same as a member of Parliament. *State v. Smalls*, 11 S. C. 262 (1879).

Sustainment of privilege by Federal circuit court.—In *Miner v. Markham*, 28 F. 387 (1886), the court held that "a member of Congress is entitled to exemption from service of process, although not accompanied with an arrest of the person, while on his way to attend a session of Congress." *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

Sustainment of privilege by state courts.—There are other decisions of courts in other states which have construed the meaning of the word "arrest" in the Federal Constitution, as used in this section, to include freedom from a summons in a civil action as well as actual arrest in such an action. The case of *Doty v. Strong*, 1 Pin. (Wis.) 84, arose when a delegate in Congress from the territory of Wisconsin had been served with summons in a civil action. He pleaded his privilege, as a member of Congress, of freedom from arrest and summons in a civil action. The Supreme Court held that as a member of Congress, under the Federal Constitution, he was free not only from actual arrest but also from any summons in a civil action. Here is the language used by Mr. Justice Miller in delivering the opinion of the court: "The defendant relied upon U. S. Const., Art. 1, § 6, which, in speaking of the Senators and Representatives in Congress, contains the following language: 'They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same.' The reason of this provision is obvious. The people elect their representatives to Congress to protect their rights and advance their interests, which should not be jeopardized by the arrest of their representative for debt or private con-

tracts of his own. It is equally necessary that his rights and interests should be protected while absent in the public service. In order to render this provision available to the extent of its necessity, it will not do to construe the words 'privileged from arrest' in a confined or literal sense." *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

In the case of *Geyer v. Irwin*, 4 U. S. (4 Dall.) 107, 1 L. Ed. 762 (1790), the decision was made upon the same provisions in the constitution of that state, and couched in the same language as that under consideration. The court in that case declared that "a member of the general assembly is undoubtedly privileged from arrest, summons, citation, or other civil process during his attendance on the public business confided to him, and that, upon principle, his suits cannot be forced to a trial and decision while the session of the legislature continues." *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

Construction of similar privilege in S. C. Constitution.—In our own State, in *Tillinghast & Arthur v. Carr*, 4 McC. (15 S. C. L.) 152, when the privilege of a member of the House of Representatives of the State of South Carolina was invaded by a summons in a civil proceeding, the court held that the language of S. C. Const., Art. 3, § 14 (which was then in these words: "The members of both houses shall be protected in their persons and estates, during their attendance on, going to, and returning from the legislature, but these privileges shall not be extended so as to protect any member who shall be charged with treason, felony, or breach of the peace.") was broad enough to cover the case, not only of arrest but also summons in a civil proceeding. The court in its reasoning uses this language: "It must be obvious that a member may be much harassed by suits, although his body is not arrested. His mind must, of course, be greatly disturbed and drawn off from his business. Besides, it brings upon him a sort of odium which lessens his usefulness. If it be admitted that he may be served with a summons while attending the legislature, it follows that he may be served with a summons *eundo et redeundo*. Thus he might, by ill-natured and malicious creditors, be sued in every district through which he passed, going and returning, and might be required to attend a court which might be sitting while the legislature was convened, and thus perhaps an undue advantage be taken of him." *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

Dissent has held term to mean freedom from actual arrest only.—It has been said in a dissenting opinion that the words “privileged from arrest” mean freedom from

actual arrest only. *Worth v. Norton*, 56 S. C. 56, 33 S. E. 792 (1899).

Applied in *State v. Smalls*, 11 S. C. 262 (1879).

§ 7. Procedure in passing bills and resolutions.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8. Powers of Congress.

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited

times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines and arsenals, dock yards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

I. General Consideration.

II. What Constitutes Interstate Commerce.

III. Activities Not Violative of Commerce Clause.

IV. Activities Violative of Commerce Clause.

V. Other Application of Section.

A. Power to Coin Money.

B. Power to Declare War.

I. GENERAL CONSIDERATION.

Congress has exclusive power to regulate commerce.—By the terms used in this Article, as well as from the nature of the power conferred, Congress has exclusive power to regulate commerce in the most enlarged and liberal sense. *Chapman v. Miller, 2 Spears (29 S. C. L.) 769.*

To secure uniform commercial regulations.—The third paragraph of this section originated in the design of its authors to impart harmony and uniformity to our

commercial regulations, both in regard to the relations of foreign nations and the intercourse of the states with each other. *Chapman v. Miller, 2 Spears (29 S. C. L.) 769.*

Without discrimination against interstate commerce.—The commerce clause by its own force prohibits discrimination against interstate commerce, whatever its form or method. The decisions of this Court have recognized that there is scope for its like operation when State legislation, nominally of local concern, is in point of fact aimed at interstate commerce or by its necessary operation is a means of gaining a local benefit by throwing attendant burdens on those without the State. *South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938), reh. denied 303 U. S. 625, 58 S. Ct. 483, 82 L. Ed. 702 (1938).*

All state action over interstate commerce is not forestalled.—While the constitutional

grant to Congress of power to regulate interstate commerce has been held to operate of its own force to curtail state power in some measure, it did not forestall all state action affecting interstate commerce. *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938), reh. denied 303 U. S. 625, 58 S. Ct. 483, 82 L. Ed. 702 (1938).

But state tax may not discriminate against interstate commerce.—While a state may tax the entire income of domestic corporations, it cannot impose any tax in such way as to discriminate against interstate commerce. *Piedmont & N. Ry. Co. v. Query*, 56 F. (2d) 172 (1932).

No state can regulate such commerce concurrently with the Federal Government under this section. *Chapman v. Miller*, 2 Spears (29 S. C. L.) 769.

Unless Congress forbears exercise of its power.—As long as Congress forbears to exercise the constitutional power to regulate commerce among the several states, each state may, for itself and within its own limits, regulate such commerce. *State v. Pinckney*, 10 Rich. (44 S. C. L.) 474.

In absence of congressional enactment or valid regulation of Interstate Commerce Commission, the State's police power may be validly exercised to insure faithful and prompt performance of duty by those engaged in interstate commerce. *Ford v. Atlantic Coast Line R. Co.*, 169 S. C. 41, 168 S. E. 143 (1932), affirmed in 287 U. S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933).

Although State may regulate commerce within its borders.—There can be no doubt that the State has the right to regulate commerce within its borders, provided it is done in such manner as not to interfere with or impose a burden upon interstate commerce. *Ingram v. Hughes*, 170 S. C. 1, 169 S. E. 425 (1933).

Statute is not obnoxious where interstate commerce not affected.—A statute is not obnoxious to this clause of the Federal Constitution which does not directly affect commerce as thus defined. *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902).

Commodity not in interstate commerce may not be subject of appeal.—The question whether a statute violates this clause will not be reviewed on appeal when it does not appear that the commodity in question was under the protection of the interstate commerce clause. *State v. Fant*, 88 S. C. 493, 70 S. E. 1027 (1911).

For additional related cases, see *Shealy v. Southern Ry. Co.*, 127 S. C. 15, 120 S. E. 561 (1924); *Hall v. South Carolina Ry. Co.*,

25 S. C. 564 (1886); *Alexander v. Gibson*, 1 N. & McC. (10 S. C. L.) 480; *Western Union Telegraph Co. v. Brown*, 234 U. S. 542, 34 S. Ct. 955, 58 L. Ed. 1457 (1914).

Applied in *Doscher v. Query*, 21 F. (2d) 521 (1927); *Pickens County v. Southern Ry. Co.*, 131 S. C. 18, 127 S. E. 365 (1925); *State v. Penny*, 19 S. C. 218 (1883); *Southern Express Co. v. Hood*, 15 Rich. (49 S. C. L.) 66; *Harbor Com'rs v. Pashley*, 19 S. C. 315 (1883).

Cited in *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927); *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455 (1905); *Williams v. Western Union Tel. Co.*, 138 S. C. 281, 136 S. E. 218 (1927); *Baker v. Western Union Tel. Co.*, 127 S. C. 535, 121 S. E. 593 (1923); *Ex parte Chase*, 62 S. C. 353, 38 S. E. 718 (1901); *State v. Liggett & Myers Tobacco Co.*, 171 S. C. 511, 172 S. E. 857 (1933); *State v. Ford Motor Co.*, 208 S. C. 379, 38 S. E. (2d) 242 (1946).

II. WHAT CONSTITUTES INTER-STATE COMMERCE.

What constitutes interstate commerce.

—Interstate commerce, ordinarily, consists of three elements: (1) the purchasing of merchandise by a resident of one state from a resident of another state; (2) the delivery of the articles of commerce; and (3) the transportation thereof. The purchase may be made by the buyer in person, through a traveling salesman of the nonresident, or by an order sent by the purchaser to the nonresident. The delivery may be made directly to the purchaser when the goods are sold or when they reach their destination in cases where they have been consigned to him. *State v. Holleyman*, 55 S. C. 207, 31 S. E. 362, 33 S. E. 366 (1899); *State v. Vetter*, 192 S. C. 1, 5 S. E. (2d) 291 (1939).

Commerce is not confined to interchange of commodities.—In its more limited sense, the term commerce might be confined to buying and selling or the interchange of commodities. But, by the Constitution, it was intended to have a much more extended meaning, as may be seen by referring to other articles of that instrument. *Chapman v. Miller*, 2 Spears (29 S. C. L.) 769.

But refers instead to act of shipping.—“Interstate commerce” has no reference to products which are shipped in such commerce, but has reference rather to the act of shipping. When an article is delivered for the purpose of being transported from one state to another, it becomes an article of interstate commerce or the instruments by which it is transported are engaged in

interstate commerce. *Pacolet Mfg. Co. v. Query*, 174 S. C. 359, 177 S. E. 653 (1934).

And to negotiation of sales of goods.—The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce. *State v. Yetter*, 192 S. C. 1, 5 S. E. (2d) 291 (1939).

And it includes navigation.—Commerce with foreign nations and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation, the transportation and transit of persons and property, and the purchase, sale, and exchange of commodities. *Mobile County v. Kimball*, 102 U. S. 691, 26 L. Ed. 238 (1880); *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902). See also, *Chapman v. Miller*, 2 Spears (29 S. C. L.) 769.

As to commerce in liquors, see *State ex rel. George v. Aiken*, 42 S. C. 222, 20 S. E. 221 (1894). See also *Cantini v. Tillman*, 54 F. 969 (1893); *State v. Holleyman*, 55 S. C. 207, 31 S. E. 362, 33 S. E. 366 (1899); *State v. Davis*, 84 S. C. 512, 66 S. E. 875 (1910).

III. ACTIVITIES NOT VIOLATIVE OF COMMERCE CLAUSE.

Railroad construction safety rules do not regulate interstate commerce.—The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property otherwise endangered by their use, are strictly within the scope of the local law. They are not in themselves regulations of interstate commerce, although they control in some degree the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the rights and duties of all persons and corporations within its limits. *Crawford v. Southern Ry. Co.*, 56 S. C. 136, 34 S. E. 80 (1899).

Nor does act regulating size and weight of trucks.—In *State v. John P. Nutt Co.*, 180 S. C. 19, 185 S. E. 25 (1935), an act regulating the size and weight of trucks was upheld as a valid exercise of the police power not in violation of this section of the Constitution, notwithstanding that the defendant owned several trucks which were made illegal by the terms of the act.

If no discrimination is involved.—Statute which limited the width and weight of

motor vehicles was held not violative of this provision, even though the regulation involves a burden on interstate commerce. As long as the State action does not discriminate, the burden is one which the Constitution permits because it is an inseparable incident of the exercise of a legislative authority which, under the Constitution, has been left to the states. *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938), reh. denied 303 U. S. 625, 58 S. Ct. 483, 82 L. Ed. 702 (1938).

Nor statute denying railroad right to escape common carrier liability.—In the case of *Chicago, etc., Ry. Co. v. Solan*, 169 U. S. 133, 18 S. Ct. 289, 42 L. Ed. 688 (1898), it was held that a statute of a state providing that no contract shall exempt any railroad corporation from the liability of a common carrier, or a carrier of passengers, which would have existed if no contract had been made, does not, as applied to a claim for an injury happening within the state under a contract for interstate transportation, contravene this provision. *Crawford v. Southern Ry. Co.*, 56 S. C. 136, 34 S. E. 80 (1899).

Statute may create rebuttable presumption as to collision cause.—In *Ford v. Atlantic Coast Line R. Co.*, 169 S. C. 41, 168 S. E. 143 (1932), affirmed in 287 U. S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933), statutes construed as creating rebuttable presumption that failure to give crossing signals was proximate cause of crossing collision were held not violative of commerce clause.

Tax is valid on stock represented by mills outside State.—State license tax on that part of capital stock of domestic corporation, which was represented by cotton mills located wholly beyond borders of State and engaged in manufacture of finished cotton goods, was not invalid as burden on interstate commerce or as in violation of Fourteenth Amendment of the Constitution of the United States. *Pacolet Mfg. Co. v. Query*, 174 S. C. 359, 177 S. E. 653 (1934).

State may impose taxes on intrastate operation of motor carrier, though carrier is also engaged in interstate operations. *State v. Hicklin*, 168 S. C. 440, 167 S. E. 674 (1933), affirmed in 290 U. S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933).

Based on carrying capacity of carrier.—In statute regulating motor carriers, license fees required of contract carriers based on carrying capacity were held reasonable as to amount and not an undue burden on interstate commerce. *State v. Hicklin*, 168

S. C. 440, 167 S. E. 674 (1933), affirmed in 290 U. S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933).

Or on proportioned use of highway by truck.—A municipal license tax applying to a nonresident corporation making deliveries in the municipality is a direct burden on interstate commerce and cannot be sustained unless, in some way, it appears affirmatively that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use. *Southern Fruit Co. v. Porter*, 188 S. C. 422, 199 S. E. 537 (1938).

Valid tax on gross receipts for business privilege within State.—An annual license tax based on gross receipts for the privilege of doing business in a county, as a school district tax, is consistent with and not violative of this section. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

Tax may apply to foreign and not local insurance companies.—Where Congress passed an act giving the states full authority to regulate and tax the business of insurance, a statute taxing foreign insurance companies and not domestic insurance companies did not violate this provision. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

Or to gasoline after interstate shipment completed.—Statute imposing tax on gasoline imported into the State and stored for future consumption was held not unconstitutional as a burden on interstate commerce in that it did not propose to tax any gasoline until twenty-four hours after it had lost interstate character as shipment in interstate commerce, at which time immunity from State taxation ends. *Gregg Dyeing Co. v. Query*, 166 S. C. 117, 164 S. E. 588 (1931), affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

Or to electricity after interstate transmission ended.—The State may not tax the interstate transmission or sale of electricity. But after the interstate journey of the current is ended and it becomes mingled with the current which the power company distributes and sells within the State, its sale unquestionably becomes subject to taxation by the State. *South Carolina Power Co. v. South Carolina Tax Com'r*, 60 F. (2d) 528 (1932), affirmed in 288 U. S. 178, 53 S. Ct. 326, 77 L. Ed. 685 (1933).

Telegrams may be sent by most "practical" route in State.—State statute requiring telegraphic messages from one point within State to another to be transmitted

by most direct and "practical" route within State was construed as not forbidding interstate transmission of message where more prompt and safe and thus was held not unconstitutional. *Ingram v. Hughes*, 170 S. C. 1, 169 S. E. 425 (1933).

And impure foods may be prohibited.—Statute making it unlawful to manufacture or sell impure food or drugs does not violate this provision of the Constitution. *Hollis v. Armour & Co.*, 190 S. C. 170, 2 S. E. (2d) 681 (1939).

As to forfeiture of vessel for breach of State fishing laws, see *Shipman v. Dupre*, 339 U. S. 321, 70 S. Ct. 640, 94 L. Ed. 877 (1950).

IV. ACTIVITIES VIOLATIVE OF COMMERCE CLAUSE.

License tax for all occupations in city is void as to certain nonresidents.—An ordinance of a city, fixing a special license tax for all occupations carried on within said city, is void under this section as to the agent of a nonresident company engaged in delivering pictures under a contract previously made between the customer and said company and selling frames to customers only, with whom the purchase of the same is voluntary and independent of the contract for the picture. *Laurens v. Elmore*, 55 S. C. 477, 33 S. E. 560 (1899).

As is tax on merchandise displayers excepting regular retailers.—An act imposing a license tax upon every person displaying articles, except regular retail merchants, to secure orders for the retail sale thereof was held unconstitutional as a burden on interstate commerce as applied to a traveling salesman for a nonresident seller who took orders for merchandise and forwarded them to the nonresident seller, who in turn shipped from the foreign state to the resident purchaser in this State, delivery being made by carrier. *State v. Yetter*, 192 S. C. 1, 5 S. E. (2d) 291 (1939).

Tax on interstate shipment of goods into city is invalid.—In *Jewel Tea Co. v. Camden*, 171 S. C. 353, 172 S. E. 307 (1934), an ordinance imposing a license tax on a foreign corporation whose car hauled into city goods being shipped in interstate commerce was held invalid because it taxed interstate commerce and not the delivery cars which operated wholly within state of destination.

And also tax on gross revenue of interstate and intrastate hauling.—An act imposing a tax on the gross revenue of both the interstate and intrastate contract hauling activities of the plaintiff, who operated a fleet of trucks, was held invalid as an

unreasonable burden on interstate commerce. *Nutt v. Ellerbe*, 56 F. (2d) 1058 (1932).

Hiring laborers is not interstate commerce.—The business of hiring laborers and soliciting emigrants is not an article of commerce within the meaning of this section. Thus, requiring an emigrant agent to obtain a license therefor is in violation of such provision. *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902).

Invalid statute of limitations on actions under Fair Labor Standards Act.—In *Davis v. Rockton & Rion R. R.*, 65 F. Supp. 67 (1946), affirmed in 159 F. (2d) 291 (1946), the court held that a special state statute of limitations on actions brought under the Fair Labor Standards Act violated this section of the Constitution.

Validity of State order requiring interstate train to stop at station.—When an order made under State authority to stop an interstate train is assailed because of its repugnancy to the interstate commerce clause, the question whether such order is void as a direct regulation of such commerce may be tested by considering the nature of such order, the character of the interstate commerce train to which it applies, and its necessity and direct effect upon the operation of such train. Such order may also be tested by considering the adequacy of the local facilities existing at the station at which the interstate commerce train has been commanded to stop. *Atlantic Coast Line Ry. Co. v. Wharton*, 207 U. S. 328, 28 S. Ct. 121, 52 L. Ed. 230 (1907).

V. OTHER APPLICATION OF SECTION.

A. Power to Coin Money.

Treasury notes are lawful tender for all debts.—Congress has power under this section to pass a law making treasury notes lawful money and legal tender in payment of debts payable in dollars and cents, whether such debts were contracted before or after the law was passed. *O'Neil v. McKewn*, 1 S. C. 147 (1869).

B. Power to Declare War.

Undeclared war is not judicially noted.—The courts are bound by a declaration or determination by the proper department of government that a war exists. Until there has been such a declaration or determination, the courts cannot take judicial notice of the existence of a war by their government. *Greenville Enterprise v. Jennings*, 210 S. C. 163, 41 S. E. (2d) 868 (1947).

Action on insurance policy relative to war declaration.—Where the insured was killed at Pearl Harbor on December 7, 1941, while serving as a member of the United States Navy, the court held he was not killed while engaged in naval service in time of war, for under the provisions of this section of the Constitution the United States was not at war until the declaration of war by Congress on Japan on December 8, 1941. *West v. Palmetto State Life Ins. Co.*, 202 S. C. 422, 25 S. E. (2d) 475 (1943).

§ 9. Limitations upon powers of Congress.

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person

holding any office of profit or trust under them, shall without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince or foreign state.

An *ex post facto* law is one that has retroactive effect. *McCoy v. State Highway Dept.*, 169 S. C. 436, 169 S. E. 174 (1933).

Appropriation bills are annual statutes. —Appropriation of supplies is the mode by which the legislative branch of the government regulates the manner in which the public money voted at each session is to be applied to the various objects of expenditure, and the appropriation bills are annual statutes passed for that purpose. *Carolina Grocery Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381 (1901).

For additional related cases, see *Charleston v. Oliver*, 16 S. C. 47 (1881); *Chapman v. Miller*, 2 Spears (29 S. C. L.) 769; *Harbor Com'rs v. Pashley*, 19 S. C. 315 (1883); *Cisson v. United States*, 37 F. (2d) 330 (1930).

Applied in *State v. Penny*, 19 S. C. 218 (1883).

Cited in *State v. Vaughn*, 95 S. C. 455, 79 S. E. 312 (1913), affirmed in 238 U. S. 612, 35 S. Ct. 940, 59 L. Ed. 1489 (1915).

§ 10. Restrictions upon powers of states.

No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

I. General Consideration.

II. Impairing Obligation of Contracts.

A. Intent of Clause.

B. Obligation of a Contract.

C. Existing State Laws.

D. Impairment of Contract.

E. Right and Remedy.

F. Contracts Included in Clause.

G. Where Contract Impaired.

H. Where Contract Not Impaired.

I. GENERAL CONSIDERATION.

Historical note.—When the Constitution of 1868 of this State was adopted and ratified, South Carolina was not a territory but a State within the Union, bound as such by all the obligations which the Constitution of the United States imposes upon the States. *Calhoun v. Calhoun*, 2 S. C. 283 (1871).

State constitution may not conflict with Federal Constitution.—The acceptance by Congress of a state constitution as republican in form does not give the force of law to provisions therein which the Constitution of the United States inhibits. *Calhoun v. Calhoun*, 2 S. C. 283 (1871).

This section applies only to states.—The prohibition of this section is only applicable to the legislation of states. In *re Kennedy*, 2 S. C. 216 (1870).

"Bills of credit" refer to monetary instruments.—"Bills of credit" embrace only such instruments as are intended to circulate as money. *State v. Mooror*, 152 S. C. 455, 150 S. E. 269 (1929).

In form of promissory notes.—The bills of credit prohibited to be issued by the states by this provision are promissory notes or bills for the payment of which

the faith of the state only is pledged. They are such bills as were emitted by Congress and the different states anterior to the adoption of the Constitution. *State v. Billis*, 2 McC. (13 S. C. L.) 12.

Not drawn against particular fund.—A note drawn on the Bank of South Carolina on the credit of a particular fund is not a bill of credit. *State v. Billis*, 2 McC. (13 S. C. L.) 12.

And issued on authority binding state.—To constitute a bill of credit within this provision, it must be issued by a state, on the faith of the state, and be designed to circulate as money. They who issue it must have authority to bind the state, and must act as agents and incur no personal responsibility, nor impart, as individuals, any credit to the paper. *State v. Billis*, 2 McC. (13 S. C. L.) 12.

Retrospective laws may be passed.—The Constitution of the United States does not prohibit the states from passing retrospective laws generally. *In re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

But not ex post facto laws.—*In re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

Ex post facto prohibition applies only to criminal cases.—The provision as to ex post facto laws herein found applies to criminal cases only. *Byrne v. Stewart*, 3 De S. (3 S. C. Eq.) 466; *Warren, Wallace & Co. v. Jones*, 9 S. C. 288 (1878); *Watson v. Mercer*, 33 U. S. (8 Pet.) 88, 8 L. Ed. 876 (1834); *Baltimore, etc., R. Co. v. Nesbit*, 51 U. S. (10 How.) 395, 13 L. Ed. 469 (1850); *Locke v. New Orleans*, 71 U. S. (4 Wall.) 172, 18 L. Ed. 334 (1866); *Carpenter v. Com.*, 58 U. S. (17 How.) 456, 15 L. Ed. 127 (1854); *Cantini v. Tillman*, 54 F. 969 (1893).

And not to civil cases.—It was said by Mr. Justice Story in *Watson v. Mercer*, 33 U. S. (8 Pet.) 88, 8 L. Ed. 876 (1834): "Ex post facto laws relate to criminal and penal proceedings which impose punishment and forfeiture, and not to civil proceedings which affect private rights retrospectively." *Callahan v. Callahan*, 36 S. C. 454, 15 S. E. 727 (1892).

Although it relates to all laws in some degree.—All laws must in some degree have an ex post facto relation. *Byrne v. Stewart*, 3 De S. (3 S. C. Eq.) 466.

Revival of jurisdiction is not ex post facto law.—An act reviving the jurisdiction of a superior court, to enable it to try persons for offenses committed during a period wherein an inferior court had ex-

clusive jurisdiction, is not an ex post facto law. *State v. Sullivan*, 14 Rich. (48 S. C. L.) 281.

Section is intended to prevent discrimination among ports.—The Constitution did not intend to control domestic regulations by the state or city affecting her own people. It intended that neither Congress, the states, nor any city should give such a preference to one port by discriminating legal advantages as to draw commerce or trade from ports of other states. *State v. City Council*, 4 Rich. (38 S. C. L.) 286.

By forbidding tax upon vessels as such.—This section was designed to forbid the levying of any tax upon a vessel as such. *Harbor Com'rs v. Pashley*, 19 S. C. 315 (1883).

Irrespective of mode of ascertaining such tax.—It is wholly immaterial whether the amount of the tax is to be ascertained by reference to the tonnage of the vessel *eo nomine* or in some other way, as is fully shown by the fact that the Supreme Court of the United States has, in several cases, held that a charge imposed upon a vessel, even though measured by its tonnage *eo nomine*, is not in violation of the Constitution of the United States where the charge is made as a compensation for services rendered such vessel, as, for example, a charge for the use of a wharf owned by a municipal corporation, even though the amount of such charge should in express terms be measured by the tonnage of the vessel because that is a matter resting in contract, is the exercise of a mere property right, and is not an exercise of sovereign authority. *Harbor Com'rs v. Pashley*, 19 S. C. 315 (1883).

Section requires consideration in contracts.—The term "contract" in this section is used in its ordinary sense as signifying the agreement of two or more minds for a consideration from one to the other to do or not to do certain acts. There is the same necessity for consideration to make a contract of tax exemption between the state and its citizens as there would be if the contract were between private parties. *Grand Lodge v. New Orleans*, 166 U. S. 143, 17 S. Ct. 523, 41 L. Ed. 951 (1897); *Columbia Water Power Co. v. Campbell*, 75 S. C. 34, 54 S. E. 833 (1906).

Judgment is not contract.—A judgment is not in itself a contract, *Biddeson v. Whytel*, 3 Burr. 1545, and it cannot originate rights of the class protected under the United States Constitution. *In re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874); *War-*

ren. *Wallace & Co. v. Jones*, 9 S. C. 288 (1878).

Nor is office held by political officer.—A political officer does not hold by contract in the sense of the Constitution, nor has he any vested right of property in a constitutional sense in the office or in the salary thereof before he has earned it. *Alexander v. McKenzie*, 2 S. C. 81 (1870).

For additional related cases, see *Columbia, etc., R. Co. v. Gibbes*, 24 S. C. 60 (1885); *Charleston v. Oliver*, 16 S. C. 47 (1881); *In re Malone*, 21 S. C. 435 (1884); *Harmon v. Wallace*, 2 S. C. 208 (1870); *Gilliland v. Phillips*, 1 S. C. 152 (1870); *O'Neil v. McKewn*, 1 S. C. 147 (1869); *Lumb v. Pinckney*, 21 S. C. 471 (1884); *State v. Solomons*, 3 Hill (21 S. C. L.) 96; *Blackman v. Gordon*, 2 Rich. (19 S. C. Eq.) 43; *Hays v. Harley*, 1 Mill. (8 S. C. L.) 267; *In re Gibbes*, 1 De S. (1 S. C. Eq.) 587; *Rutland v. Copes*, 15 Rich. (49 S. C. L.) 84; *Witte Bros. v. Clarke*, 17 S. C. 313 (1882); *State v. Penny*, 19 S. C. 218 (1883); *Duke v. Williamsburg*, 21 S. C. 414 (1884); *Norton v. Bradham*, 21 S. C. 375 (1884); *Hayes v. Clinkscales*, 9 S. C. 441 (1878); *Johnstone v. Crooks*, 3 S. C. 200 (1872); *Rose v. Charleston*, 3 S. C. 369 (1872); *Withers v. Jenkins*, 14 S. C. 597 (1881); *Walker v. State*, 12 S. C. 200 (1879); *Ex parte Graham*, 13 Rich. (47 S. C. L.) 277; *State v. Gaillard*, 11 S. C. 309 (1879); *Whaley v. Gaillard*, 21 S. C. 560 (1884); *Thomas v. Daniel*, 2 McC. (13 S. C. L.) 354; *Barry v. Iseman*, 14 Rich. (48 S. C. L.) 129; *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Applied in *Alexander v. Wilmington, etc., R. Co.*, 3 Strob. (34 S. C. L.) 594; *Chapman v. Miller*, 2 Spears (29 S. C. L.) 769; *Moore v. Holland*, 16 S. C. 15 (1881); *Hand v. Savannah, etc., R. Co.*, 12 S. C. 314 (1879); *Graniteville Mfg. Co. v. Roper*, 15 Rich. (15 S. C. L.) 138; *Alexander v. Gibson*, 1 N. & McC. (10 S. C. L.) 480; *Attorney-General v. Clergy Society*, 10 Rich. (31 S. C. Eq.) 604; *Wood v. Wood*, 14 Rich. (48 S. C. L.) 148; *Miles v. King*, 5 S. C. 146 (1874); *Shelor v. Mason*, 2 S. C. 233 (1870); *Gibbes v. Greenville, etc., R. Co.*, 13 S. C. 228 (1880); *Robinson v. Lee*, 122 F. 1012 (1903), affirmed in 196 U. S. 64, 25 S. Ct. 180, 49 L. Ed. 388 (1904); *Cantini v. Tillman*, 54 F. 969 (1893); *Columbia Water Power Co. v. Campbell*, 75 S. C. 34, 54 S. E. 833 (1906); *McCandless v. Richmond & D. R. Co.*, 38 S. C. 103, 16 S. E. 429 (1892); *Central R., etc., Co. v. Georgia Const., etc., Co.*, 32 S. C. 319, 11

S. E. 192 (1890); *Bouknight v. Epting*, 11 S. C. 71 (1878).

Stated in *Smith v. Greenville County*, 189 S. C. 424, 1 S. E. (2d) 502 (1939).

Cited in *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455 (1905); *Howze v. Howze*, 2 S. C. 229 (1870); *Antonakas v. Anderson Chamber of Commerce*, 130 S. C. 215, 126 S. E. 35 (1924); *Central R., etc., Co. v. Georgia Const., etc., Co.*, 32 S. C. 319, 11 S. E. 192 (1890); *Wallace v. Sumter County*, 189 S. C. 395, 1 S. E. (2d) 345 (1939); *Kirk v. Douglass*, 190 S. C. 495, 3 S. E. (2d) 536 (1939); *State v. Osborne*, 195 S. C. 295, 11 S. E. (2d) 260 (1940).

II. IMPAIRING OBLIGATION OF CONTRACTS.

A. Intent of Clause.

State may not impair obligation of contracts.—It was said by Mr. Justice Swayne, in delivering the opinion of the court in *Walker v. Whitehead*, 83 U. S. (16 Wall.) 314, 21 L. Ed. 357 (1872): "The Constitution of the United States declares that no state shall pass any 'law impairing the obligation of contracts.' These propositions may be considered consequent axioms in our jurisprudence: the laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which affect its validity, construction, discharge, and enforcement. Nothing is more material to the obligation of a contract than the means of enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment. The obligation of a contract 'is the law which binds the parties to perform their agreement.' Any impairment of the obligation of a contract—the degree of impairment is immaterial—is within the prohibition of the Constitution. The states may change the remedy, provided that no substantial right secured by the contract is impaired. Whenever such a result is produced by the act in question, to that extent it is void. The states are no more permitted to impair the efficacy of a contract in this way than to attack its validity in any other manner. Against all assaults coming from that quarter, whatever guise they may assume, the contract is shielded by the Constitution. It must be left with the same force and effect, including the substantial means of enforcement, which existed when it was made. The guaranty of the Constitution

gives it protection to that extent." *Ex parte Folsom*, 131 F. 496 (1904).

By legislative act or constitutional provision.—A state can no more impair an existing contract by a constitutional provision than by an act of the legislature. Both methods are within the prohibition of this section. *Shuler v. Bull*, 15 S. C. 421 (1881), citing *Gunn v. Barry*, 82 U. S. (15 Wall.) 610, 21 L. Ed. 212 (1872).

Or by any other means.—The prohibition "that no state shall pass any law impairing the obligation of contracts" is not confined to acts or resolutions of the legislative bodies of a state, but is against the exercise of the forbidden power by a state. It is the state, no matter by what body represented, which is subjected to the restraint. *Calhoun v. Calhoun*, 2 S. C. 283 (1871.)

United States Supreme Court decisions must be followed.—Upon questions arising under the United States Constitution, the state courts must conform their decisions to those of the Supreme Court of the United States. *Cochran v. Darcy*, 5 S. C. 125 (1874).

Section keeps contracts unimpaired as created.—The great principle intended to be established by the Constitution was the inviolability of the obligation of contracts as the obligation existed and was recognized by the laws in force at the time the contracts were made. *State v. Carew*, 13 Rich. (47 S. C. L.) 498.

Without disturbing proper state regulations.—The constitutional provision in relation to laws impairing the obligation of contracts was designed to operate only on some of the undertakings contained in the contract, and was not intended to interfere with the internal regulations which a state may think proper to adopt for the government of its citizens. *Warren, Wallace & Co. v. Jones*, 9 S. C. 288 (1878).

B. Obligation of a Contract.

Contract is legal obligation.—The obligation of a contract, as spoken of in the Constitution, is a legal and not a mere moral obligation. It is the law which binds a party to perform his undertaking. The obligation does not inhere or subsist in the contract itself *proprio vigore*, but in the law applicable to the contract. This law is not the universal law of nations, but it is the law of the state where the contract is made. *State v. Carew*, 13 Rich. (47 S. C. L.) 498.

Not based on mere moral obligation.—The civil obligation interpreted by natural or universal law, modified by munici-

pal law and not mere moral obligation, is within the protection of the Constitution. In *re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

It depends on law for performance.—The obligation of the contract consists in the power and efficacy of the law which applies to and enforces the performance of the contract, or the payment of an equivalent for non-performance. It subsists in the law applicable to the contract. This definition looks principally to that part of the obligation which imposes on the government the duty of enforcement, treating the power of enforcement residing in the government, under the duty imposed by the contract, as an element of value in the contract itself and protected under the Constitution. In *re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

By parties making it.—The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made, which are necessarily referred to in all contracts and form a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no standard to ascertain the extent of either other than that which the terms of the contract indicate according to their settled legal meaning. When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other. Hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act on the remedy, is directly obnoxious to the provisions of the Constitution. *McCracken v. Hayward*, 43 U. S. (2 How.) 608, 11 L. Ed. 397 (1844); *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

And any impairment thereof is prohibited.—In *Black on Constitutional Law*, quoted with approval in *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903), we find: "The obligation of a contract is that duty of performing the contract according to its terms and intent which the law recognizes and enforces. Any law which precludes

recovery for a breach of contract, excuses one of the parties from performing it, renders it invalid, enlarges or abridges the intention of the parties, postpones or accelerates the time of performance, or interposes such obstacles to its enforcement as practically to annul it thus impairs its obligation and is void."

The objection to a law on the ground of impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing or accelerating the performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. *Green v. Biddle*, 21 U. S. (8 Wheat.) 1, 5 L. Ed. 547 (1923); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

C. Existing State Laws.

Contract obligation includes everything within its scope.—The obligation of a contract includes everything within its obligatory scope. *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

And depends on existing State laws.—The "obligation of contracts" as an abstract legal entity, in this State as in every other state, at any particular time must depend upon and be ascertained by the then existing laws of the State. *Wood v. Wood*, 14 Rich. (48 S. C. L.) 148.

Which become part thereof.—The law which exists at the time and place of making a contract enters into and forms a part of it. *Shuler v. Bull*, 15 S. C. 421 (1881); *Walker v. Whitehead*, 83 U. S. (16 Wall.) 314, 21 L. Ed. 357 (1872).

Among which is means of its enforcement.—The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced and by which the parties can be obliged to perform it. *Louisiana v. New Orleans*, 102 U. S. 203, 26 L. Ed. 132 (1880); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

Without which it becomes imperfect.—Among these elements, nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract as such, in the view of the law, ceases to be and falls into the class of those "imperfect obligations", as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. *Edwards v.*

Kearzey, 96 U. S. 595, 24 L. Ed. 793 (1877); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

Or impaired when efficacy of such means is lessened.—Whatever legislation lessens the efficacy of the means of enforcing a contract impairs its obligation. *Louisiana v. New Orleans*, 102 U. S. 203, 26 L. Ed. 132 (1880); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

Contract cannot be impaired by later judicial decision.—The Supreme Court of the United States has in numerous cases held that where a contract is valid at the time it is made, under the laws of the state as then expounded, its validity or obligation cannot be impaired by any subsequent judicial decision giving a different exposition of the law. The Supreme Court of this State has in *Walker v. State*, 12 S. C. 200 (1879), and *Whaley v. Gaillard*, 21 S. C. 560 (1884), deferred to the authority of that court in that class of cases which involve the question whether a particular law or decision is in violation of that clause of the Constitution which forbids a state from passing any law impairing the obligation of a contract. *McLure v. Melton*, 24 S. C. 559 (1886).

This doctrine applies only to contract cases.—This is a doctrine confined to cases of contract, and probably not even then where it depended upon a single case, never recognized nor followed, and overruled at the first opportunity. *McLure v. Melton*, 24 S. C. 559 (1886). See also *Walker v. State*, 12 S. C. 200 (1879).

D. Impairment of Contract.

Legislative decrease in value is impairment test.—One of the tests of contract impairment is that its value has been diminished by legislation. It is not, by the Constitution, to be impaired at all. This is not a question of degree or manner of cause, but of encroaching in any respect on its obligations and thus dispensing with any part of its force. *Planters' Bank v. Sharp*, 47 U. S. (6 How.) 301, 12 L. Ed. 447 (1848); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

Relative to state action on contract.—To impair a contract, the action of the state must be upon and in regard to it. *Calhoun v. Calhoun*, 2 S. C. 283 (1871); *Charles River Bridge v. Warren Bridge*, 36 U. S. (11 Pet.) 420, 9 L. Ed. 773, 938 (1837).

Any change in contract's terms is impairment.—The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the ex-

tent of the change which the law effects in it. Any deviation from its terms by postponing or accelerating the performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligations. *Henry v. Alexander*, 186 S. C. 17, 194 S. E. 649 (1937).

Any law which enlarges, abridges, or in any manner changes the intention of the parties resulting from the stipulations in the contract necessarily impairs it. *State v. Carew*, 13 Rich. (47 S. C. L.) 498.

A law is within the true meaning of the Constitution if it in effect impairs the obligation of existing contracts. *State v. Carew*, 13 Rich. (47 S. C. L.) 498.

Violating this section and S. C. Const., Art. 1, § 8.—Any deviation from the terms of a contract by imposing conditions not expressed therein or dispensing with performance of those expressed impairs its obligation within the meaning of and in violation of this section and S. C. Const., Art. 1, § 8, however minute or apparently immaterial in their effect on the contract they may be. *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

But ending performance may not impair contract.—Anything that puts an end to the performance of a contract does not necessarily violate its obligation; but "it is the motive policy, the object, that must characterize the legislative act to affect it with the imputation of violating the obligation of contracts." In *re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

State may withdraw consent to be sued.—The state can withdraw at any time its consent to be sued, and the right to withdraw it is not affected either by the contract clause of the Constitution, or, ordinarily, by the limitations of the Fourteenth Amendment. *Duke Power Co. v. South Carolina Tax Commission*, 81 F. (2d) 513 (1936), cert. denied 298 U. S. 669, 56 S. Ct. 834, 80 L. Ed. 1392 (1936).

E. Right and Remedy.

Right and remedy are inseparable.—The ideas of right and remedy are inseparable. Want of right and want of remedy are the same thing. *Edwards v. Kearzey*, 96 U. S. 595, 24 L. Ed. 793 (1877); *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

And distinction between them is clear.—The distinction between the obligation of a contract and the remedy for its enforce-

ment is well established by the authorities. While the legislature has no right to impair the obligation of a contract, it has the undoubted right to change, modify, or vary the nature and extent of the remedy, provided a substantial remedy is left the creditor. Under the United States Constitution, the former power is denied to the several states, but the latter exists in full force. *Von Hoffman v. Quincy*, 71 U. S. (4 Wall.) 535, 18 L. Ed. 403 (1866); *State v. County Treasurer*, 4 S. C. 520 (1873); *Warren, Wallace & Co. v. Jones*, 9 S. C. 288 (1878).

Change in remedy must not impair right.

—The legal remedies for enforcement of a contract which belong to it at the time and place where it is made are a part of its obligation. A state may change them, provided the change involves no impairment of a substantial right. *Cochran v. Darcy*, 5 S. C. 125 (1874).

An act so changing existing remedies as materially to impair the rights and interests of creditors is within the inhibition of the Constitution of the United States in reference to laws "impairing the obligation of contracts." *State v. Bank of South Carolina*, 1 S. C. 63 (1869).

But state may change remedy at will.—

Whatever belongs merely to the remedy may be altered according to the will of the state, provided such alteration does not impair the obligation of the contract. *Bronson v. Kinzie*, 42 U. S. (1 How.) 311, 11 L. Ed. 143 (1843); *Warren, Wallace & Co. v. Jones*, 9 S. C. 288 (1878).

Since changing remedy is not prohibited.

—The obligation of a contract is not identified with the means which the government may furnish to enforce it. A prohibition to pass any law impairing it does not imply a prohibition to vary the remedy, nor does a power to vary the remedy imply a power to impair the obligation derived from the act of the parties. In *re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

Thus imprisonment for debt may be abolished.—A state may constitutionally abolish imprisonment for debt as to existing contracts. Although by so doing the remedy of the creditor is impaired, the obligation of the contract is not impaired in the constitutional sense of the term. *Ware v. Miller*, 9 S. C. 13 (1877).

And prior executions may be regulated.—

A law which regulates the issuing of executions previously rendered affects the remedy merely, and does not impair the obligation of the contract. *Warren, Wallace & Co. v. Jones*, 9 S. C. 288 (1878).

But suspending remedy may cause impairment.—All suspension by statute of remedies existing when the contract was made is more or less impairing its obligation. *State v. Carew*, 13 Rich. (47 S. C. L.) 498.

As may diminution of remedy.—Any legislation which materially diminishes the remedy given by law to the creditor at the time his contract is made just so far impairs the obligation of the contract. *State v. Carew*, 13 Rich. (47 S. C. L.) 498.

F. Contracts Included in Clause.

Obligation of contracts includes marriage obligation.—A dissolution of the marriage obligation without any fault or assent of the parties may as well fall within the prohibition of the Constitution as any other contract for a valuable consideration. *Callahan v. Callahan*, 36 S. C. 454, 15 S. E. 727 (1892).

And act creating State debt.—The inhibition of this section, which states that "no state shall pass any law impairing the obligation of contracts," inheres in a debt of the State created under an act providing, as the Constitution of the State directs, for the levy of "a tax, annually, sufficient to pay the annual interest on such debts," and prevents the legislature of the State from depriving the public creditor of his remedy to enforce the collection of the tax under the law in force at the passage of the act. *Morton, Bliss & Co. v. Comptroller General*, 4 S. C. 430 (1873).

And bond issue creating contract with purchaser.—The issue of bonds by a school district is a contract between it and the purchaser which, in view of this section and S. C. Const., Art. 1, § 8, cannot be impaired. *Welch v. Getzen*, 85 S. C. 156, 67 S. E. 294 (1910); *Dove v. Kirkland*, 92 S. C. 313, 75 S. E. 503 (1912).

And pledge for payment of interest thereon.—When the State borrows money on bonds issued by it for that purpose and pledges a certain fund for the payment of the interest to accrue thereon, such pledge is a part of the contract with the holders of the bonds, and the State has no right, under this section of the Constitution of the United States, to impair the obligation of the contract by diverting the fund to other purposes. *State v. Cardozo*, 8 S. C. 71 (1876).

And contract where executor assents to legacy.—After assent by an executor to a pecuniary legacy there is a contract, express or implied, to pay it. And though no action at law may lie on such contract.

it is, nevertheless, within the provision of this section which provides that no state shall pass any law impairing the obligation of contracts. *Dunham v. Elford*, 13 Rich. (34 S. C. Eq.) 190.

G. Where Contract Impaired.

Act withdrawing debtor's property from process.—An act withdrawing the property of a debtor from the operation of all legal process by his creditors, leaving to them the barren right to sue, virtually destroys the remedy of a creditor and impairs the obligation of his contract. *State v. Bank of South Carolina*, 1 S. C. 63 (1859).

Act relieving mortgagors from deficiency judgments.—An act approved May 2, 1933 (38 St. at Large, p. 350), entitled "An act to provide for the relief of real estate mortgagors and other judgment debtors from deficiency judgments in foreclosure to the extent of the true value of the mortgaged property, and to prescribe the procedure thereon," is unconstitutional, null, and void because it impairs the obligation of a mortgage contract executed prior to enactment of the statute. *Federal Land Bank v. Garrison*, 185 S. C. 255, 193 S. E. 308 (1937).

Act depriving sheriff of fees.—Act No. 1135 of 1930 Acts is unconstitutional because it deprives the sheriff of Sumter County of civil fees prior to July 1, 1935, when Act No. 62 of 1935 Acts became effective. *Hurst v. Sumter County*, 189 S. C. 376, 1 S. E. (2d) 238 (1939).

Act regulating hours of workers.—Act No. 943 of the 1938 Acts, which regulates hours of workers, is invalid as violative of this section because (1) it is not a proper exercise of the public power of the State, and (2) the classifications therein are arbitrary and without reasonable basis. *Gasque v. Notes*, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

Statute denying validity of contract.—A statute that denies validity to, modifies, or refuses to enforce a contract impairs its obligation. *Ogden v. Saunders*, 25 U. S. (12 Wheat.) 213, 6 L. Ed. 606 (1827). *In re Kennedy*, 2 S. C. 216 (1870), overruled on other grounds in 5 S. C. 125 (1874).

Statute providing that certain debts bear interest.—An act of the State legislature, which provides that "debt due on open accounts and other demands not heretofore bearing interest by law shall bear interest," impairs the obligation of contracts at least so far as such act relates to debts contracted before its passage. *Goggans v. Turnipseed*, 1 S. C. 80 (1869).

H. Where Contract Not Impaired.

Act suspending statute of limitations.—An act of the legislature suspending the statute of limitations in actions upon contracts then existing does not impair the obligation of contracts and is constitutional. *Wardlaw v. Buzzard*, 15 Rich. (49 S. C. L.) 158.

Contract for sale of slaves.—A contract made in 1854 for the sale of slaves, being legal, binding, and in conformity to public policy then existing, was not invalidated by the subsequent emancipation of the slaves and a change of public policy in reference to slavery in view of this section. *Calhoun v. Calhoun*, 2 S. C. 283 (1871).

Distribution of motor vehicle license fees.—Section 58-1443 of the Code, providing for distribution of motor vehicle license fees, does not violate this section with regard to impairing the obligation of contracts. *State v. Bates*, 198 S. C. 430, 18 S. E. (2d) 346 (1941).

Partial refund of gasoline tax.—Sections 65-1101 et seq. of the Code, providing for refund of all except one cent of the gasoline tax to purchasers of gasoline used only in

farm operations, do not impair obligations of the contracts of holders of State highway certificates of indebtedness. *State v. Query*, 207 S. C. 500, 37 S. E. (2d) 241 (1946).

Statute changing time for procuring automobile license does not impair obligation of contract, since "license" is not a contract but merely a privilege to do what otherwise would be unlawful. *Heslep v. State Highway Dept.*, 171 S. C. 186, 171 S. E. 913 (1933).

Statutes providing for highway condemnation proceedings.—The condemnation proceedings provided for in the Code, permitting the State Highway Department to condemn private lands, do not violate this section of the Constitution. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Statutes relating to collection of checks.—In *Witt v. People's State Bank*, 166 S. C. 1, 164 S. E. 306 (1932), §§ 8-196 to 8-198 of the Code, relating to the collection and payment by banks of checks and other instruments for the payment of money, were held not to violate this section of the Constitution.

ARTICLE II.**§ 1. President and Vice President.**

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and representatives to which the state may be entitled in the Congress; but no Senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President,

the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.]]⁶

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

§ 2. Powers of the President.

The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers,

⁶ See 12th amendment.

as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

§ 3. Messages to Congress; additional powers and duties.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ 4. Impeachment.

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. —

ARTICLE III.

§ 1. Judicial power; tenure of office.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section confers judicial power of United States.—The judicial power provided for under this and the following section is that of the United States: a power to administer, to expound, to enforce the laws of the Federal Government, to hear and determine causes arising under those laws,

and to punish offenders against their authority. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

For additional related cases, see *State v. McBride*, Rice (24 S. C. L.) 400; *Davis v. South Carolina*, 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

§ 2. Jurisdiction.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.⁷

7. See 11th amendment.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

I. General Consideration.

II. Source of Judicial Power.

III. Application to Cases.

I. GENERAL CONSIDERATION

Judicial power is not identical with jurisdiction. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

But refers to power to hear cases.—The term “judicial power” is equivalent to a provision that “the judiciary of the United States shall have power to hear all cases.” *State v. Wells*, 2 Hill (20 S. C. L.) 687.

The Federal judiciary is additional to that existing in the states. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

And Federal courts do not alone decide extent of their authority. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

Thus state courts have jurisdiction over certain Federal offenses concurrently with Federal courts. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

Congress may select court in which to enforce Federal legislation.—Both state and Federal courts having jurisdiction, Congress might, in legislating upon a subject constitutionally within its power, select the agent which should enforce its sanction, and the State authority must obey it, both as the declared will of the United States, and also of the State. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

For additional related cases, see *State v. Bowen*, 8 S. C. 382 (1876); *Hyatt v. McBurney*, 18 S. C. 199 (1882); *Carson v. Hyatt*, 118 U. S. 279, 6 S. Ct. 1050, 30 L. Ed. 167 (1886).

Cited in *Riser v. Southern Ry. Co.*, 67 S. C. 419, 46 S. E. 47 (1903).

II. SOURCE OF JUDICIAL POWER

Constitution extended jurisdiction of Federal courts.—The Constitution of the United States has extended the jurisdiction of the Federal courts over several

classes of cases of which the state courts already had jurisdiction and of which the Federal courts would not have taken cognizance without such provision. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

Which is additional to that possessed by states.—The United States judiciary is additional to that existing in the states. Where the latter had a common-law jurisdiction of subject matter, which either had arisen or else might arise, it was not taken from them, although courts of the United States were clothed with the same power. Thus Congress might direct proceedings, civilly or criminally, to be in either one court or the other. *State v. Wells*, 2 Hill (20 S. C. L.) 687.

Each constitutional grant is limited to terms thereof.—Every grant to the government of the United States by the Constitution is limited to the powers expressed in the terms of such grant or arising therefrom by necessary implication. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

The object of the Constitution was to apportion certain governmental powers between the general and local governments, and such an apportionment is, in its nature, limitative. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Where such construction is possible.—The Tenth Amendment is as follows: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.” This cannot with any propriety be read as a new grant to the states or the people of such power as had not been delegated or prohibited by the Constitution, for that would assume the existence of a considerable period of time when these powers were either in abeyance or vested somewhere else, which is an assumption inadmissible as inconsistent with the nature of govern-

mental powers. It must be concluded that Art. 10 was intended as declaratory of a pre-existing intent of the Constitution, and that would lead us to construe the Constitution precisely as if the Tenth Amendment had been incorporated in it at its first adoption. Reading, then, the Constitution with this reservation, it is necessary that the terms of every grant should be construed as the express limitation of such grant where that is reasonably possible. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Thus grant of judicial power is limited by U. S. Const., Art. 3.—It is clear that U. S. Const., Art. 3 was intended to limit as well as vest the judicial power of the United States. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

In first two sections thereof.—The first limitation is perceived by comparing the first and second sections of Art. 3. In the first section, the judicial power of the United States is described by a limitation that has its force from the mode in which that power shall be vested, namely, in the Supreme and inferior courts of the United States. The second section gives it a further definition as to the subjects that may be brought within it, among which are cases arising under the Constitution, and laws and treaties of the United States. As Congress can only establish the jurisdictions of courts, ordain their functions, and delegate their powers by virtue of the grant of judicial power, and as that grant is required to be exhausted upon the United States courts, it follows that Congress cannot mould the jurisdiction, remedial system, or process of the state courts and, therefore, cannot directly cut off that jurisdiction or accomplish that result in any other way than indirectly by means of constitutional jurisdiction conferred on the United States courts. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

A further limitation is implied by the words "extend to." *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

And Congress cannot enlarge such power.—Congress cannot by any measure enlarge the jurisdiction of the courts of the United States beyond the measure of Art. 3 of the Constitution or grant them pow-

ers that are not warranted by such grant of jurisdiction. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

III. APPLICATION TO CASES

Jurisdiction in civil and criminal cases.—The Constitution draws no distinction between civil and criminal causes as regards the matter of jurisdiction. Thus, such matter must be controlled by provisions common to both civil and criminal cases. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Effect of grant of judicial power.—The grant of judicial power in the Constitution to certain prescribed cases is equivalent to its denial in all other cases. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Object of defining "cases."—The object of this section was to establish and limit judicial jurisdiction by defining the "cases" to which it should extend. Cases are the natural boundary of jurisdiction in one of its directions. In the other direction the character of parties is the boundary. That sense of the word "case" should then be taken as its intended sense that enables it to serve as the boundary of original jurisdiction where that jurisdiction is described by it. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Meaning of "case" is presumed understood.—The Constitution assumes to assign certain cases to certain jurisdictions. It assumes that what is meant by a "case" is well understood, and it attempts no new definition of the term. It signifies no intention to change any of the features of the great remedial system of the common law and equity. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Through legal exposition.—There is not the slightest doubt that it was intended that the word "case" should receive its definition and sense by means of legal exposition and not according to any idea popularly attached to the term. Its direct and primary sense is that technical sense in which the law understands it, and if that sense best satisfies the manifest object of the use of the expression, it must prevail. *State v. Davis*, 12 S. C. 528 (1879),

reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

As demand made by party prosecuting another.—What the Constitution meant by a case for the purpose of determining a question of original jurisdiction is the statement of the claim or demand made by a party prosecuting another in a court. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

"Case" applies to suit or other proceeding.—The term "case" is, according to familiar legal usage, applicable to a suit or other remedial proceeding in a court of justice, to matters brought into an appellate court by means of a writ of error and assignment of errors, or to other similar proceeding. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

And includes parties and matter in controversy.—When used to designate a suit or proceeding in a court of original jurisdiction, the term "case" embraces the parties and subject matter in controversy between them, its character and description for jurisdictional purposes being determined by the nature of the demand of the party asking the court for relief. When applied to a writ of error and assignment of errors, it covers certain alleged errors in a legal judgment consisting in failure to apply proper law to a case for its adjudication. Every error assigned is a case in substance and effect, as it would separately and independently support a writ of error as such. It would follow that, in order to determine for the purpose of appeal whether a case is one arising under the Constitution, laws, and treaties of the United States, inquiry should be directed to ascertain whether any of the alleged errors concern propositions of law deriving their force from that Constitution or the laws or treaties made under it. If such errors are found, a case for the appellate jurisdiction of the United States courts appears. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

"Cases affecting ambassadors."—The instance of "cases affecting ambassadors," etc., is not a departure from the order of expression. On the contrary, the form of the expression opens the inference that it was intended to give this jurisdiction a scope beyond the instances where the ambassador or other public minister is a party in a legal sense, as consistent with

the use of word cases instead of controversies. More exact and significant language could not have been employed. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Original jurisdiction of United States courts.—The United States courts can have original jurisdiction of cases only where there is a demand of affirmative relief by plaintiff or defendant, based upon the Constitution, laws, or treaties of the United States. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Denial of such original jurisdiction.—Congress cannot confer upon the United States courts original jurisdiction of a case involving an offense against the laws of a state because the defense depends for its force and effect upon the Constitution and laws of the United States. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Appellate jurisdiction of United States circuit courts.—The circuit courts of the United States have no appellate jurisdiction over cases properly instituted in the State courts. Cases are removable to the former courts from the latter under acts of Congress only when they could have been brought in the first instance in the courts of the United States. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

The United States circuit courts have no jurisdiction of a controversy between a state and a citizen of another state. It was not error, therefore, in the State court in such case to refuse an order removing the cause to the United States circuit court. *State v. Corbin & Stone*, 16 S. C. 533 (1882).

Bill for maritime tort will not lie in equity.—This section was cited in *Gillam v. Parker*, 19 F. (2d) 358 (1927), in support of the ruling that a bill against government officials for unlawfully seizing a foreign vessel on the high seas, bringing her into the jurisdiction of the courts of United States, and there continuing to hold her unlawfully, will not lie in equity since it involves a maritime tort within the jurisdiction of admiralty.

As to forfeiture of vessel for breach of State fishing laws, see *Shipman v. Dupre*, 339 U. S. 321, 70 S. Ct. 640, 94 L. Ed. 877 (1950).

§ 3. Treason; proof and punishment.

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

§ 1. Full faith and credit among states.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

- I. General Consideration.
- II. Foreign Divorce, Alimony, Support.
- III. Matters of Record and of Parol.
- IV. Authentication of Foreign Judgment.
- V. Application of Section.

I. GENERAL CONSIDERATION

Judgment of one state is recognized by other states.—It will be at once seen that the framers of our Federal Constitution have by this section provided that, while under the law of nations, from principles of comity, the judgments of foreign countries should be respected as such in every other country when produced provided such foreign judgments accord with domestic policy, it should be the duty of every state in this Union to give full force and effect to the judgments of any other state when duly authenticated. Hence, if this doctrine is sound law, holders of judgments obtained in a different state have the right to produce such judgments in the courts of this state. It is our duty to respect them and to give them the same force and effect that they have in the state where rendered as required by the Constitution. *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

In *Hampton v. McConnell*, 16 U. S. (3 Wheat.) 234, 4 L. Ed. 378 (1818), decided by Chief Justice Marshall, the syllabus thereof is as follows:

"A judgment of a state court has the same credit . . . and effect in every other court within the United States as it has in the state where it was rendered. Whatever pleas would be good to a suit thereon, in such states and no others, can be pleaded in any other court within the

United States." *Cline v. Southern Ry. Co.*, 231 F. 238 (1916).

Without amendment of such judgment.—A South Carolina court, under this section and under the doctrine of comity, has no right to amend or change a foreign decree established here. *Johnson v. Johnson*, 196 S. C. 474, 13 S. E. (2d) 593 (1941).

Or re-examination on merits.—In *Hanley v. Donoghue*, 116 U. S. 1, 6 S. Ct. 242, 29 L. Ed. 535 (1885), it was said: "Judgments recovered in one state of the Union, when proved in the court of another [state], differ from judgments recovered in a foreign country in no respect other than that of not being re-examinable on the merits, nor impeachable for fraud in obtaining them, if rendered by a court having competent jurisdiction of the cause and of the parties." *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

Such judgment is conclusive of issues raised.—Under this section and the act of Congress (1790) passed in pursuance thereof, a judgment of another state when properly authorized must be regarded in a cause in this State as a judgment of record, conclusive of everything decided by it and having precisely the same effect as if the case were being tried in the state where the judgment was rendered. *Morton & Co. v. Naylor*, 1 Hill (19 S. C. L.) 439.

But is enforced according to laws of state recognizing it.—The extent to which a foreign judgment is enforced must be determined by local laws and usages. *Johnson v. Johnson*, 196 S. C. 474, 13 S. E. (2d) 593 (1941).

This section applies to a judgment of a United States circuit court. *McCullough v. Hicks*, 63 S. C. 542, 41 S. E. 761 (1902); *Holstein v. Board of Com'rs*, 64 S. C. 374, 42 S. E. 180 (1902).

Statute of limitations plea fails unless valid where judgment rendered.—Under the act of Congress (1790), passed in pursuance of this section, the plea of the statute of limitations to an action of debt will not be good in the courts of this State if it would not be good in the state from which the judgment comes. *Morton & Co. v. Naylor*, 1 Hill (19 S. C. L.) 439.

Applied in *Shirley v. Parris*, 121 S. C. 260, 113 S. E. 788 (1922); *Cantey v. Philadelphia Life Ins. Co.*, 166 S. C. 181, 164 S. E. 609 (1932).

Quoted in *Livingston v. Atlantic Coast Line R. Co.*, 176 S. C. 385, 180 S. E. 343 (1935).

Cited in *Ex parte Cannon*, 75 S. C. 214, 55 S. E. 325 (1906); *Belue v. United Commercial Travelers*, 121 S. C. 179, 113 S. E. 364, 117 S. E. 591 (1922).

II. FOREIGN DIVORCE, ALIMONY, SUPPORT.

Conditions under which foreign divorce is recognized.—In *Scheper v. Scheper*, 125 S. C. 89, 118 S. E. 178 (1923), the court held that a foreign judgment in a divorce action rendered by a competent court having jurisdiction of the parties and the subject matter is entitled, under the full faith and credit clause, to such force and effect in South Carolina courts as may properly be accorded the judgment of another state under the rules governing the extraterritorial effect of such judgments. *Johnson v. Johnson*, 194 S. C. 115, 8 S. E. (2d) 351 (1940).

The question whether a judgment of divorce rendered by a foreign court is valid in this State and binding in the courts of this State was raised in *Ex parte White*, 38 S. C. 41, 16 S. E. 286 (1892), but was not decided as its decision was not necessary to the verdict of that case.

General appearance in foreign court bars collateral attack.—A Florida divorce decree is not subject to collateral attack based on the ground that the husband was not domiciled in Florida where the wife actively participated in the Florida proceedings by entering a general appearance, filing pleadings, and placing in issue the very matters she now seeks to contest. *Kahn v. Kahn*, 213 S. C. 369, 49 S. E. (2d) 570 (1948).

Foreign alimony decree may be enforced.—While this section places judgments of

sister states on the same footing in most respects as domestic judgments and grants them a general faith and credit, it is clear that when the issue has to do with the method of enforcement, no greater effect need be given to an alimony decree of a sister state than is given to similar judgments in the state where such foreign judgments may be established. *Johnson v. Johnson*, 196 S. C. 474, 13 S. E. (2d) 593 (1941).

Decree of Maryland circuit court awarding alimony to wife who obtained divorce a mensa et thoro was held entitled to full faith and credit as to alimony accrued and unpaid. *Alexander v. Alexander*, 164 S. C. 466, 162 S. E. 437 (1932).

And also support decree for minor child.—The full faith and credit clause applies to an unalterable decree of alimony for a minor child. *Yarborough v. Yarborough*, 290 U. S. 202, 54 S. Ct. 181, 78 L. Ed. 269 (1933).

Foreign property settlement is not reopened where issues concluded.—Where by way of answer to a bill of complaint in a divorce proceeding in Florida, the wife prayed that a property settlement be set aside and charged that it had been obtained by fraud and coercion, and where this matter was fully gone into and the wife availed herself of the opportunity to attack the validity of the property settlement which the Florida court by its final decree ratified and confirmed, and where appellant did not appeal from the judgment of the Florida court, any question now affecting the validity of the settlement must be regarded as settled and ended. *Kahn v. Kahn*, 213 S. C. 369, 49 S. E. (2d) 570 (1948).

For case decided before amendment of S. C. Const., Art. 17, § 3, see *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

III. MATTERS OF RECORD AND OF PAROL.

Matters of record must be proved by production of the record or that which is made by law of equal import with the record itself, namely, a duly authenticated copy. *Campbell v. Home Ins. Co.*, 1 S. C. 158 (1869).

Matters resting in parol must be proved by parol. *Campbell v. Home Ins. Co.*, 1 S. C. 158 (1869).

According to common-law rules.—Judicial proceedings which from their nature cannot be proved in the manner prescribed by the act of Congress are, nevertheless, in this State held entitled to full faith and

credit under the Constitution, and are to be proved in accordance with the rules of the common law. *Lawrence v. Gaultney, Cheves* (25 S. C. L.) 7; *Campbell v. Home Ins. Co.*, 1 S. C. 158 (1869).

Proving parol matters has not been defined by Congress.—Congress has exercised authority as to prescribing the manner in which acts, records, and proceedings shall be proved, but it has not defined the mode of proving such matters as rest in parol. *Campbell v. Home Ins. Co.*, 1 S. C. 158 (1869).

Although Constitution includes such matters.—It was evidently the intent of the Constitution, as expressed by the phrase "records and judicial proceedings," to include proceedings that could not properly be described as "records," or, in other words, that could only be evidenced by matter of parol. *Campbell v. Home Ins. Co.*, 1 S. C. 158 (1869).

IV. AUTHENTICATION OF FOREIGN JUDGMENT.

Authentication of judgment is evidence of its competent rendition.—Under this section a foreign judgment, properly authenticated, is *prima facie* evidence that it was rendered by a court of competent jurisdiction in conformity to the laws of the state in which it was rendered. *Coskery v. Wood*, 52 S. C. 516, 30 S. E. 475 (1898).

But inquiry may be made into court's jurisdiction.—In *Thompson v. Whitman*, 85 U. S. (18 Wall.) 457, 21 L. Ed. 897 (1873), it was said by Mr. Justice Bradley that: "Neither the constitutional provision that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, nor the act of Congress passed in pursuance thereof prevent an inquiry into the jurisdiction of the court in which a judgment offered in evidence was rendered." *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

In collateral proceeding in another state.—The want of jurisdiction of the court in which a judgment is rendered in any state may be questioned in a collateral proceeding in another state, notwithstanding the provisions of this section of the Constitution and the law of 1790, and notwithstanding the averments contained in the record of the judgment itself. *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895), *McCullough v. Hicks*, 63 S. C. 542, 41 S. E. 761 (1902).

As to subject matter or person.—The want of jurisdiction may be shown either

as to the subject matter or the person, or, in proceedings in rem, as to the thing. *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

And record is nullity if jurisdiction absent.—The record of a judgment rendered in another state may be contradicted as to the facts necessary to give the court jurisdiction. And, if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist. *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

Objection is made when record offered in evidence.—The objection that the exemplification of the record of a foreign judgment is not properly authenticated, or that the court rendering it had not jurisdiction, must be made when the record is offered in evidence. *Coskery v. Wood*, 52 S. C. 516, 30 S. E. 475 (1898).

V. APPLICATION OF SECTION.

United States circuit court judgment is given full faith.—Where the United States circuit court declares a statute authorizing townships to subscribe bonds in aid of a railroad constitutional, the Supreme Court of the State will give full faith to such judgment and refuse to enjoin the corporate authorities of such township from carrying into effect such judgment, though such court had previously declared similar acts unconstitutional. *Holstein v. Board of Com'rs*, 64 S. C. 374, 42 S. E. 180 (1902).

And mandamus therefrom is not enjoined by State courts. *McCullough v. Hicks*, 63 S. C. 542, 41 S. E. 761 (1902).

Judgment of state court is given full faith in Federal court.—Under this section, a Federal court gives the same effect to a judgment of a state court as it had in the state where it was rendered, and a judgment which bars an action in the state where it was rendered is *res judicata* in the Federal courts. *Cline v. Southern Ry. Co.*, 231 F. 238 (1916).

Foreign administrator need not be recognized for South Carolina estate.—The finding of fact by a court in Florida that appellant was a fit and proper person to administer an estate in South Carolina was not binding on a South Carolina court in appointing an administrator for the same estate. *Burklim v. Pinkhussolin*, 58 S. C. 469, 36 S. E. 908 (1900); *Overby v. Gordon*, 177 U. S. 214, 20 S. Ct. 603, 44 L. Ed. 741 (1900).

Where appellant had been appointed administrator by a court in Florida for an estate in South Carolina, the appointment

of another administrator for the same estate by a court in South Carolina was not in violation of this section. *Burkhim v. Pinkhussohn*, 58 S. C. 469, 36 S. E. 908 (1900).

§ 2. Privileges and immunities; fugitives.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

- I. Privileges and Immunities.
 - A. General Consideration.
 - B. Application.
- II. Fugitives from Justice.
 - A. General Consideration.
 - B. Application.

Cross Reference.

As to similar provision in State Constitution, see S. C. Const., Art. 1, § 5.

I. PRIVILEGES AND IMMUNITIES.

A. General Consideration.

Purpose of "privileges and immunities" clause.—It will be observed that by the express terms of the Constitution the purpose of this section is to secure to citizens of one state the same privileges and immunities as are enjoyed by citizens of other states. The Supreme Court of the United States has held that the privileges and immunities thus secured are those only which grow out of citizenship. *Cummings v. Wingo*, 31 S. C. 427, 10 S. E. 107 (1889); *Conner v. Elliott*, 59 U. S. (18 How.) 591, 15 L. Ed. 497 (1855).

Its sole purpose is to declare to the several states that whatever those rights you grant to or establish for your own citizens, or limit, qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction. *La Tourette v. McMaster*, 104 S. C. 501, 89 S. E. 398 (1916), affirmed in 248 U. S. 465, 39 S. Ct. 160, 63 L. Ed. 362 (1919).

"Privileges and immunities" refer to fundamental rights.—The term "privileges and immunities" means those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments, and which

have at all times been enjoyed by the citizens of the several states. It includes protection by the government, the enjoyment of life and liberty, the right to acquire and possess property, and to pursue happiness and safety, subject to such restraints as the government may justly prescribe for the general good. *La Tourette v. McMaster*, 104 S. C. 501, 89 S. E. 398 (1916), affirmed in 248 U. S. 465, 39 S. Ct. 160, 63 L. Ed. 362 (1919).

Qualification as to "privileges and immunities."—The "privileges and immunities" clause is qualified by the clause following it which deals with fugitives from justice. *State v. Anderson*, 1 Hill (19 S. C. L.) 327.

Citizenship is not residence.—With respect to discrimination under this section, citizenship and residence are not the same thing, and the one does not include the other. *Cummings v. Wingo*, 31 S. C. 427, 10 S. E. 107 (1889); *La Tourette v. McMaster*, 104 S. C. 501, 89 S. E. 398 (1916), affirmed in 248 U. S. 465, 39 S. Ct. 160, 63 L. Ed. 362 (1919).

Applied in *Central R., etc., Co., v. Georgia Const., etc., Co.*, 32 S. C. 319, 11 S. E. 192 (1890).

Cited in *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902); *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455 (1905); *Cantini v. Tillman*, 54 F. 969 (1893).

B. Application.

The same laws must apply equally to all.—In *State v. Goodwill*, 33 W. Va. 179, 10 S. E. 285 (1889), the court uses this language: "The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances. Every partial or private law

which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void." *Laurens v. Anderson*, 75 S. C. 62, 55 S. E. 136 (1906).

Unless special privilege does not harm rights of others.—Privileges may be granted to particular individuals when by so doing the rights of others are not interfered with. But everyone has a right to demand that he be governed by general rules. A special statute which without one's consent singles him out for regulation by a law different from that applied in all similar cases would not be legitimate legislation, but would be an arbitrary mandate not in the province of free government. Those who make the laws are to be governed by promulgated, established laws which are not to be varied in particular cases, in order to have one rule for the rich and poor and for the favorite at court and the countryman at the plough. *Laurens v. Anderson*, 75 S. C. 62, 55 S. E. 136 (1906).

Arbitrary classification of working hours violates section.—Act No. 943 of the 1938 Acts regulating hours of workers is invalid as violative of this section because it is not a proper exercise of the public power of the State and the classifications therein are arbitrary and without reasonable basis. *Gasque v. Nates*, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

Distribution of assets of insolvent foreign corporation.—A state may through judicial proceedings take possession of the assets of an insolvent foreign corporation within its limits and distribute them or their proceeds among creditors according to their respective rights. Yet it cannot, under this section, deny the right of citizens of other states to participate in such distribution on equal terms with its own citizens. *Wilson v. Keels*, 54 S. C. 545, 32 S. E. 702 (1899).

Residence requirement for compensation for out-of-State injury.—The requirement of § 72-169 of the Code that an employee be a resident of this State before he can recover under the Workmen's Compensation Law for accidents occurring without the State does not violate the constitutional guaranty of this section. *Tedars v. Savannah River Veneer Co.*, 202 S. C. 363, 25 S. E. (2d) 235 (1943).

II. FUGITIVES FROM JUSTICE.

A. General Consideration.

Purpose of fugitive "from justice" clause.—The object of the Constitution is to en-

able a state whose laws have been violated to secure the arrest of the person charged with such violation, even though such person may be beyond the reach of ordinary process of such state. *Ex parte Swearingin*, 13 S. C. 74 (1880).

This section is fundamental law.—This section constitutes the fundamental law on this subject of all the states. It is a part of the municipal law of each, and is to be obeyed, observed, and respected by every citizen and officer. *State v. Anderson*, 1 Hill (19 S. C. L.) 327.

And its execution is defined by statute.—For several years after the adoption of the Constitution of the United States, there was no legislation providing the mode by which this clause of the Constitution should be carried into effect. As a natural consequence controversies arose between the states in regard to this matter, one of which, between Pennsylvania and Virginia, doubtless gave rise to the passage of the act of 1793 prescribing the mode of carrying this clause of the Constitution into effect. For when the governor of Virginia declined to comply with the requisition from the governor of Pennsylvania, the latter sent all the papers to President Washington, calling especial attention to the objections of the authorities of the state of Virginia based on the necessity of future legislation upon the subject, and suggesting that the matter be brought to the attention of Congress. The President referred the papers to his attorney-general, Mr. Randolph, who gave an elaborate opinion as to the proper construction of the clause of the Constitution in question from which the necessity for further legislation was apparent. The President accordingly brought the attention of Congress to the matter by a message in November, 1792, and in the following February the act of 1793 was passed. That act, in so far as it is necessary for the purpose of this case to state, in substance provides that whenever the executive authority of a state shall demand any person as a fugitive from justice of the executive authority of any state to which such person shall have fled, and shall produce a copy of an indictment found or an affidavit made before a magistrate of any state charging the person so demanded with having committed treason, felony, or other crime in the state from which the demand proceeds, certified as authentic by the governor of the state from whence the person so charged has fled, it shall be the duty of the governor of the state to which such person has fled to cause such person to be arrested, se-

cured, and delivered to the agent of the state from which such demand proceeds. It will be observed that three things are necessary to be done by the governor of the state making the demand: (1) he must demand the person as a fugitive from justice; (2) he must produce a copy of an indictment found, or an affidavit made before a magistrate of a state, showing that the person demanded is charged with having committed some crime in the state from which he has fled; and (3) such copy of the indictment or affidavit must be certified as authentic by the governor of the state making the demand. *Ex parte Swearingen*, 13 S. C. 74 (1880).

B. Application.

Scope of term "flee from justice."—The term "flee from justice" in this section includes cases where a citizen of one state commits a crime in another state and then returns to his home. *Ex parte Swearingen*, 13 S. C. 74 (1880).

Fugitive may be arrested before demand on Governor.—A person may, before demand is made on the Governor, be arrested in the state in which he is found for the purpose of being surrendered to the state

from whence he fled, either by warrant from a magistrate or by private persons without a warrant who may justify the arrest by showing that *prima facie* a felony or other crime has been committed by the prisoner in another state, or that he there stands charged therewith. *State v. Anderson*, 1 Hill (19 S. C. L.) 327.

And this rule applies to fugitives from a foreign nation. *State v. Anderson*, 1 Hill (19 S. C. L.) 327.

Prisoner should be delivered on demand.—It is an imperative obligation on South Carolina that a prisoner, charged with murder in Georgia, should be delivered on demand. *State v. Anderson*, 1 Hill (19 S. C. L.) 327.

Mandate need not contain order of arrest.—Where a prisoner is in the hands of the sheriff under a mandate issued by the Governor of this State in pursuance of a requisition from the governor of Georgia, and such mandate requires the delivery of the prisoner to an agent of the governor of Georgia, the prisoner will not be discharged because the mandate contains no order for his arrest. *Ex parte Swearingen*, 13 S. C. 74 (1880).

§ 3. Admission of new states; power over territory and other property.

New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ 4. Guarantee of republican form of government.

The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Cited in *Santee Mills v. Query*, 122 S. C. 158, 115 S. E. 202 (1922).

ARTICLE V.

Amendment of the Constitution.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for pro-

posing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Cited in *Drennan v. Southern Ry.*, 91 S. C. 507, 75 S. E. 45 (1912).

ARTICLE VI.

Debts; supremacy; oath.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

The Senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious tests shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification and establishment.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.⁸

8. The Constitution was submitted by resolution of the Constitutional Convention on September 17, 1787. It became effective on March 4, 1789, the day fixed for commencement of the operations of the government, by virtue of its ratification by the conventions of eleven states, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788.

Subsequently the conventions of North Carolina and Rhode Island ratified the Constitution on November 21, 1789 and May 29, 1790, respectively.

CONSTITUTION OF THE UNITED STATES

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the Twelfth. In Witness whereof we have hereunto subscribed our names.

Go. WASHINGTON—
Presdt. and Deputy from Virginia

New Hampshire

JOHN LANGDON,

NICHOLAS GILMAN.

Massachusetts

RUFUS KING,

NATHANIEL GORMAN.

Connecticut

WM. SAML. JOHNSON,

ROGER SHERMAN.

New York

ALEXANDER HAMILTON.

New Jersey

WIL. LIVINGSTON,

JONA. DAYTON.

DAVID BREARLEY,

WM. PATERSON,

Pennsylvania

B. FRANKLIN,

THOMAS MIFFLIN,

ROBT. MORRIS,

GEO. CLYMER,

THO. FITZSIMONS,

JARED INGERSOLL,

JAMES WILSON,

GOUV. MORRIS.

Delaware

GEO. READ,

GUNNING BEDFORD, Jun'r,

JOHN DICKINSON,

RICHARD BASSETT.

JACO. BROOM,

Maryland

JAMES M'HENRY,

DAN. OF ST. THOS. JENIFER.

DANL. CARROLL,

Virginia

JOHN BLAIR,

JAMES MADISON, Jr.

North Carolina

WM. BLOUNT,

RICH'D DOBBS SPAIGHT.

HU. WILLIAMSON,

South Carolina

J. RUTLEDGE,

CHARLES COTESWORTH PINCKNEY,

CHARLES PINCKNEY,

PIERCE BUTLER.

Georgia

WILLIAM FEW,

ABR. BALDWIN.

Attest:

WILLIAM JACKSON, *Secretary*.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Freedom of religion, of speech and of the press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.⁹

Amendment protects all religious denominations.—The provisions of this amendment, which prohibit the establishment of any one denomination of Christians, protect all in the peaceable enjoyment of their own mode of worship. Instead of renouncing all religious denominations, they protect all. *Magee v. O'Neill*, 19 S. C. 170 (1883).

Since it is not limited to orthodox religions.—The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views. He who makes a profession of evangelism is not in

a less preferred position than the casual worker. *Follett v. McCormick*, 321 U. S. 573, 64 S. Ct. 717, 88 L. Ed. 938 (1944).

Flat license tax on exangelist violates amendment.—A flat license tax applied to one who earns his livelihood distributing religious publications from door to door on the street in his home town as an evangelist or preacher is violative of the freedom of worship guaranteed by this amendment. *Follett v. McCormick*, 321 U. S. 573, 64 S. Ct. 717, 88 L. Ed. 938 (1944).

Cited in *Gaffney v. Putnam*, 197 S. C. 237, 15 S. E. (2d) 130 (1941).

ARTICLE II.

Right to keep and bear arms.

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.¹⁰

ARTICLE III.

Quartering of soldiers.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.¹¹

ARTICLE IV.

Searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹²

9. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

10. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

11. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

12. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

I. General Consideration.
II. Application of Section.

I. GENERAL CONSIDERATION.

Amendment applies only to Federal Government.—This and the following amendments apply only to Federal officers. *Kanellos v. United States*, 282 F. 461 (1922); *State v. Harley*, 107 S. C. 304, 92 S. E. 1034 (1917); *State v. Atkinson*, 40 S. C. 363, 18 S. E. 1021 (1894).

And not to states.—This amendment does not protect citizens against unreasonable searches by the state government and its agencies. *Kanellos v. United States*, 282 F. 461 (1922); *State v. Harley*, 107 S. C. 304, 92 S. E. 1034 (1917); *State v. Atkinson*, 40 S. C. 363, 18 S. E. 1021 (1894).

Amendment protects those whose rights are invaded.—The prohibition of this amendment is for the benefit of the person or individual whose rights have been invaded. *Chicco v. United States*, 284 F. 434 (1922).

No right is invaded if papers seized on disclaimed premises.—No constitutional right of a petitioner is invaded by the seizure of papers taken from premises with which he disclaims connection or relationship. *Chicco v. United States*, 284 F. 434 (1922).

Evidence secured with consent is admissible.—Where defendant on having his automobile stopped by officers admitted he had whisky therein and voluntarily gave the officers the key to the rear compartment in which he had whisky, evidence of his confession and of the results of the search was admissible as not violating his constitutional rights, under this and the following amendments relating to unreasonable search and compelling defendant to testify against himself. *State v. Guest*, 118 S. C. 130, 110 S. E. 112 (1921).

Accused can be searched if legally arrested.—An accused, when legally placed under arrest, can be searched to discover and seize the fruits or evidences of crime. *Woods v. United States*, 279 F. 706 (1922).

Warrant must describe objects with particularity.—An affidavit for a warrant to search for property held in fraud upon revenue of the United States, which is substantially in the language of the statute authorizing such search warrant, but which does not particularly describe the

persons or things to be seized, does not conform to the requirements of this amendment. A warrant issued thereon and following its language is void. *Woods v. United States*, 279 F. 706 (1922).

Cited in *In re Gourdin*, 45 F. 842 (1891).

II. APPLICATION OF SECTION.

Amendment applies only to owner of searched premises.—Petitioner cannot complain that he had been obliged on demand by Federal officers to deliver to them keys which he testified he had surreptitiously and unlawfully had made to enable him to occupy premises to which he had no right for the storage of liquor, although by using such keys his liquor was found in such premises, for the prohibition of unlawful search and seizure in this amendment and in the Fifth Amendment can only be invoked by the owner of the premises and not by one clandestinely occupying them. *Chicco v. United States*, 284 F. 434 (1922).

State constable may search without warrant.—In prosecution for possessing and transporting intoxicating liquor, evidence obtained by a state constable by search made without a search warrant against defendant's protest is competent, notwithstanding this amendment. *Kanellos v. United States*, 282 F. 461 (1922).

And legislative committee may examine dispenser's books.—A committee appointed by the General Assembly to examine the books of a county dispenser does not violate in acting under such authority the provisions of this amendment and the State Constitution providing that the right of the people to be secure in their persons and property against unreasonable searches and seizures shall not be violated. *State v. Farnum*, 73 S. C. 165, 53 S. E. 83 (1905).

Violation must be alleged to regain property.—Petitions for return of property seized in alleged unlawful search are properly denied when they contain no allegation that such property is the property of petitioners, alleging neither in what respect its possession by the government affects the interests of petitioners nor anything else tending to show that its continued possession by the government or the manner in which it was obtained violates the constitutional rights of the petitioners. *Chico v. United States*, 284 F. 434 (1922).

ARTICLE V.

Rights of accused in criminal proceedings; due process; eminent domain.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases

arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.¹³

- I. General Consideration.
- II. Taking Property for Public Use.
- III. Due Process of Law.
- IV. Compelled To Be Witness.

I. GENERAL CONSIDERATION.

This amendment is intended solely as a limitation on the Federal power, and does not apply to the power of the states. *State v. Harley*, 107 S. C. 304, 92 S. E. 1034 (1917); *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916); *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905); *State v. Atkinson*, 40 S. C. 363, 18 S. E. 1021 (1894); *Ex parte Schmidt*, 24 S. C. 363 (1886); *State v. Shirer*, 20 S. C. 392 (1884); *State v. Shumpert*, 1 S. C. 85 (1869).

This amendment applies only to the enactments of Congress. *Cheraw v. Tuxrage*, 184 S. C. 76, 191 S. E. 831 (1937).

Applied in *United States v. Windham*, 264 F. 376 (1920).

Cited in *Shealy v. Southern Ry. Co.*, 127 S. C. 15, 120 S. E. 561 (1924); *South Carolina & G. R. Co. v. American Tel. & Tel. Co.*, 65 S. C. 459, 43 S. E. 970 (1903); *Bull v. Kirk*, 37 S. C. 395, 16 S. E. 151 (1892); *Cantini v. Tillman*, 54 F. 969 (1893); *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918); *Abbeville Elec. etc., Co. v. Western Electrical Supply Co.*, 66 S. C. 328, 44 S. E. 952 (1902); *Thomas v. Atlantic Coast Line R. Co.*, 168 S. C. 185, 167 S. E. 239 (1933); *State v. Hicklin*, 168 S. C. 440, 167 S. E. 674 (1933), affirmed in 290 U. S. 169, 54 S. Ct. 142, 78 L. ed. 247 (1933).

II. TAKING PROPERTY FOR PUBLIC USE.

Compensation is required for any taking.—Any attempted distinction between requisition or condemnation of property by the United States is largely technical in ordinary parlance, the word "requisition" being more often used with reference to the taking of personal property, and the word "condemnation" to the taking of real estate. But, whether the taking is by requi-

sition or condemnation, this amendment requires just compensation to be made. *Filbin Corp. v. United States*, 266 F. 911 (1920).

Taking may result from negligently flooding property.—Flooding and injuring property by negligently impounding a natural water course is a taking under this constitutional provision. *Chick Springs Water Co. v. State Highway Dep't.*, 159 S. C. 481, 157 S. E. 842 (1931); *Chick Springs Water Co. v. State Highway Dep't.*, 178 S. C. 415, 183 S. E. 27 (1935).

Or from exercise of police power relative to filling in land.—An act authorizing the city of Charleston to fill up low lots declared to be a public nuisance by the board of health and to recover the cost from the landowner if it does not exceed one half the value of the lot is a valid exercise of the police power not violative of this amendment. The General Assembly has the right to delegate such power to the city authorities. *City Council v. Werner*, 38 S. C. 488, 17 S. E. 33 (1893).

Electrification Authority may use highways for transmission lines.—The use by the Electrification Authority of the highways for its transmission lines under the State Rural Electrification Authority Act is not an additional servitude on land granted by a private owner to the State for highway purposes, and such use by the Authority does not constitute taking private property for public use without just compensation. *Lay v. State Rural Electrification Authority*, 182 S. C. 32, 188 S. E. 368 (1936).

Highway condemnation proceedings in Code are valid.—The condemnation proceedings provided for in the Code, permitting the State Highway Department to condemn private lands, do not violate this amendment. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

III. DUE PROCESS OF LAW.

Insurance tax may exclude domestic companies.—Where Congress passed an act giving the states full authority to regulate and tax the business of insurance, a stat-

¹³. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

ute taxing foreign insurance companies and not domestic insurance companies does not violate this provision. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

Judgment as vested right.—*United States Rubber Co. v. McManus*, 211 S. C. 342, 45 S. E. (2d) 335 (1947).

IV. COMPELLED TO BE WITNESS.

Tax return is constitutional though income illegally derived.—The Fifth Amendment does not authorize one to refuse to state the amount of his income because it has been made in crime. *United States v. Sullivan*, 274 U. S. 259, 47 S. Ct. 607, 71 L. ed. 1037 (1927).

Witness in bankruptcy is protected.—This amendment, which provides that no person shall be compelled in any criminal case to be a witness against himself, may be invoked by a witness under examination in bankruptcy proceedings to insure that no testimony given by the bankrupt on examination concerning conduct of his business shall be offered in evidence against him in any criminal proceeding. This is a protection only against use of his testimony in a prosecution in a Federal court. *In re Nachman*, 114 F. 995 (1902).

Evidence under void warrant is not admitted.—To admit evidence procured from defendant under a void search warrant would in effect compel him to become a witness against himself in violation of this amendment, and it will, therefore, not be admitted. *Woods v. United States*, 279 F. 706 (1922).

But evidence secured with consent is admitted.—*State v. Guest*, 118 S. C. 130, 110 S. E. 112 (1921).

As are questions about prior convictions.—Where accused admits prior arrests for other offenses and service on the chain gang, overruling objections to questions put to him about convictions for prior offenses, on the ground that they went into details of such offenses, is not prejudicial to accused as compelling him to testify against himself within the meaning of this amendment. *State v. Hilton*, 87 S. C. 434, 69 S. E. 1077 (1911).

Statute creating presumption of fraud is constitutional.—Section 16-364 of the Code, creating a presumption of fraudulent appropriation where officers and other persons charged with safekeeping of public funds fail to account for them as required by law, was held not to violate this amendment of the Constitution. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

ARTICLE VI.

Right to speedy trial, witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.¹⁴

Amendment limits only Federal powers.—This amendment is a limitation only on Federal powers. *Ex parte Schmidt*, 24 S. C. 363 (1886).

Statute creating presumption of fraud is constitutional.—See note to Fifth Amendment.

Evidence at former trial is admissible.—The constitutional right of an accused to be confronted with the witnesses against him is not infringed by admitting in evidence the stenographer's notes of the testimony at a former trial given by a witness

whose presence cannot be secured or who has since died. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950).

Under certain conditions.—The evidence of a witness who has been examined at a former trial, where the point in issue is the same and the parties are the same, may be introduced at a second trial where (1) the witness is dead, (2) insane, (3) beyond the seas, and (4) the court is satisfied that the witness has been kept away by the contrivance of the opposite party. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d)

¹⁴. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

168 (1950); *State v. Rogers*, 101 S. C. 280, 85 S. E. 636 (1915); *McCall v. Alexander*, 84 S. C. 187, 65 S. E. 1021 (1909).

One day has been held sufficient to prepare case.—The court, in vacating the conditions of suspended sentence imposed on defendant and ordering it to become immediately effective, may fix the time within

which the defendant is required to make return to rule to show cause so as to leave him legally only one day in which to prepare the case without violating the provisions of this amendment as to right to counsel. *State v. Stauss*, 114 S. C. 445, 103 S. E. 769 (1920).

ARTICLE VII.

Trial by jury in civil cases.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.¹⁵

Amendment applies only to Federal courts.—This amendment, relating to the right of trial by jury, applies only to courts sitting under the authority of the United States. *Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929).

Action on contractor's bond may be tried by jury.—An action by a subcontractor on the bond given by a government contractor is an action at law in which the parties are entitled to a trial by jury under this amendment, where more than twenty dollars is involved. *Arnold v. United States*, 280 F. 338 (1922), error dismissed 263 U. S. 427, 44 S. Ct. 144, 68 L. Ed. 371 (1923).

And also special dower admeasurement issue.—Notwithstanding this amendment, in an action for admeasurement of dower, the demandant has no right to submit to the jury the entire case but only special issues, the action not being one to recover possession of specific real or personal property, or for the recovery of money only. *Frierson v. Jenkins*, 75 S. C. 471, 55 S. E. 890 (1906).

Highway condemnation proceedings in Code are valid.—See note to Fifth Amendment.

ARTICLE VIII.

Bail, fines and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.¹⁶

Women may be sentenced to hard labor.—Sentencing a woman to thirty months hard labor does not constitute cruel or unreasonable punishment. *State v. Huffstetler*, 213 S. C. 319, 49 S. E. (2d) 585 (1948).

Cited in *State v. Kimbrough*, 212 S. C. 348, 46 S. E. (2d) 273 (1948).

ARTICLE IX.

Reservation of rights of the people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage other retained by the people.¹⁷

15. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

16. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

17. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

ARTICLE X.

Powers reserved to states or people.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.¹⁸

Constitutional grant of power to United States is strictly construed.—Every grant to the government of the United States by the Constitution is limited to the powers expressed in the terms of such grant or arising therefrom by necessary implication. *State v. Davis*, 12 S. C. 528 (1879), reversed on other grounds in 107 U. S. 597, 2 S. Ct. 636, 27 L. Ed. 574 (1882).

Incidents of sovereignty given up by states.—Under this amendment, the Federal government possesses no powers but such as are expressly given to it or necessarily incident to those given, and the states in the formation of this government surrendered none of the incidents of sov-

ereignty except such as are enumerated in Art. 1, § 10 of the Constitution, which they are expressly prohibited from exercising. *State v. Antonio*, 2 Tread. (7 S. C. L.) 776.

Powers constructively withheld from states.—Although the states retain all powers not taken away, yet when a power is granted to the national government the exercise by the states of which would be inconsistent with the grant, that power is constructively withheld from the states. *State v. Billis*, 2 McC. (13 S. C. L.) 12.

Insurance tax may exclude domestic companies.—See note to Fifth Amendment.

ARTICLE XI.

Restriction of judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.¹⁹

I. General Consideration.

II. Suits Not against State.

III. Suits against State.

I. GENERAL CONSIDERATION.

Amendment applies only to United States courts.—This amendment is expressly applicable only to the courts of the United States. *Prudential Ins. Co. v. Murphy*, 207 S. C. 324, 35 S. E. (2d) 586 (1945), affirmed in 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

And state may not consent to suit.—The waiver by the state of its immunity from suit under this amendment and its consent to be sued in its own courts does not constitute consent to be sued in a Federal court. *Southern Ry. Co. v. Query*, 21 F. (2d) 333 (1927).

II. SUITS NOT AGAINST STATE.

Citizen may sue foreign corporation.—Notwithstanding this amendment, a citizen of one state can sue a corporation which

has been created by and transacts its business in another state (the suit being brought in the latter state), although some of the members of the corporation are not citizens of the state in which the suit is brought, and although the state itself may be a member of the corporation. *Louisville R. Co. v. Letson*, 43 U. S. (2 How.) 497, 11 L. Ed. 353 (1844).

And railroad may sue state railroad commission for rate relief.—A proceeding by receivers of a railroad against state railroad commissioners for relief against alleged unjust and unreasonable rates for freight transportation established by such commissioners is not a proceeding against the state within this amendment which inhibits the exercise of jurisdiction by Federal courts in suits brought against one of the United States by citizens of another state. *Clyde v. Richmond & D. R. Co.*, 57 F. 436 (1893).

Without making state party to suit.—The fact that the act authorizing state

18. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

19. Proposed by Congress on March 4, 1794, and declared ratified on January 8, 1798.

railroad commissioners to fix rates requires actions to recover penalties for disregarding them to be brought in the name of the state, and for its benefit, does not make the state in any sense a party or privy to the record. *Clyde v. Richmond & D. R. Co.*, 57 F. 436 (1893).

Though state may have material interest therein.—That the state has a material interest in a proceeding concerning unjust rates for the shipping of certain commodities as a large and perhaps the only shipper of those commodities does not make it a party to the proceedings so as to preclude the Federal court from exercising jurisdiction. *Clyde v. Richmond & D. R. Co.*, 57 F. 436 (1893).

Commission winding up affairs of State dispensary may not be sued.—There is no just ground for the conclusion that the State, in providing by legislation for the liquidation of the affairs of the State dispensary, intended to divest itself of its right of property in the assets of such agency so as to permit commissioners appointed to liquidate dispensary affairs to be sued by creditors seeking payment from trust funds held by the commission for such liquidation. *Mumay v. Wilson Distilling Co.*, 213 U. S. 151, 29 S. Ct. 458, 53 L. Ed. 742 (1909).

Improper order of Governor may be set aside.—When officers of the State act under invalid authority, or exceed or abuse their lawful authority and thereby invade private rights that are secured by the Constitution, an action to redress injuries caused by the unauthorized act is not a suit against the State, since the acts of

officials that are not legally authorized, or that exceed or abuse authority or discretion conferred upon them, are not acts of the State. Thus an action to set aside an order of the Governor, which improperly suspended a member of the State Highway Commission, was not prohibited by this amendment. *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

III. SUITS AGAINST STATE.

Creditor may not sue State dispensary.—Where county dispensary board purchases supplies for the sale of intoxicating liquor, the title to such supplies vests in the State, so that, the board having paid the proceeds of sales to other designated officers of the State as required by law, an action by a creditor having furnished supplies to recover therefor in quasi contracts is one to which the State is a necessary party within the prohibition of this amendment. *Carolina Glass Co. v. Murray*, 206 F. 635 (1913).

Nor may Federal bank sue State agency.—Actions by Federal land bank and Federal intermediate credit bank against State Highway Department to recover auto license fees paid under protest were "actions against State" and not maintainable without legislative authority. *Federal Land Bank v. State Highway Dept.*, 172 S. C. 174, 173 S. E. 284 (1934).

Federal land bank's automobile used in conduct of its business was an "instrumentality of the United States" not subject to State license fees. *Federal Land Bank v. State Highway Dept.*, 172 S. C. 174, 173 S. E. 284 (1934).

ARTICLE XII.

Election of President and Vice President.

The electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons

having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, of such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President should be eligible to that of Vice President of the United States.²⁰

ARTICLE XIII.

§ 1. Slavery abolished.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. Enforcement.

Congress shall have power to enforce this article by appropriate legislation.²¹

Amendment does not affect social distinctions between races.—This amendment, together with the Fourteenth and Fifteenth Amendments, did not in any way affect the social distinctions subsisting between the white and negro races at the time of their enactment. *Flood v. News & Courier Co.*, 71 S. C. 112, 50 S. E. 637 (1905).

Thus publication of white man as negro is libel.—This and the two following amendments have not destroyed the law of the State making publication of a white man as a negro a libel. *Flood v. News & Courier Co.*, 71 S. C. 112, 50 S. E. 637 (1905).

Third party may employ servant who breaches contract.—As this and the following amendment abolish all involuntary servitude except for crime, one who hires a servant who has already broken his contract of service with knowledge of the breach is not responsible to the servant's master, despite the common-law holding to that effect. For if anyone who engaged a servant breaking his contract of employment would be liable to servant's master, the servant would practically be compelled to remain in the service until the expiration of his contract and thus be reduced to a state of involuntary servitude. *Shaw v. Fisher*, 113 S. C. 287, 102 S. E. 325 (1927).

20. Proposed by Congress on December 9, 1803, and declared ratified on September 25, 1804.

21. Proposed by Congress on January 31, 1865, and declared ratified on December 18, 1865.

ARTICLE XIV.

§ 1. Citizenship rights not to be abridged by states.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Apportionment of representatives in Congress.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3. Persons disqualified from holding office.

No person shall be a Senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

§ 4. What public debts are void.

The validity of public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. Power to enforce article.

The Congress shall have power to enforce by appropriate legislation, the provisions of this article.²²

22. Proposed by Congress on June 13, 1866, and declared ratified on July 28, 1868.

- I. General Consideration.
- II. Privileges and Immunities.
- III. Due Process of Law.
 - A. Scope of Clause.
 - B. Where Due Process Violated.
 - C. Where Due Process Not Violated.
- IV. Equal Protection of the Laws.
 - A. Scope of Clause.
 - B. Where Equal Protection Violated.
 - C. Where Equal Protection Not Violated.

Cross References.

As to due process, privileges and immunities, and equal protection of the laws, see S. C. Const., Art. 1, § 5. As to free and open elections, see S. C. Const., Art. 1, § 10.

I. GENERAL CONSIDERATION.

Amendment does not affect social distinctions between races.—See note to Thirteenth Amendment.

State police powers are broad.—In the matter of police regulation, the powers of the state are excessively broad, and laws enacted for that purpose may be impolitic, harsh, and oppressive without contravening this amendment. *Southern Bell Tel. & Tel. Co. v. Calhoun*, 287 F. 381 (1923).

And general exercise thereof is allowed.—The Fourteenth Amendment to the Constitution of the United States does not interfere with the proper exercise of the police power of the several states. Accordingly, the provisions of this amendment prohibiting a state from depriving any person of life, liberty, or property without due process of law do not operate as a limitation upon the police power of the state to pass and enforce such laws as in its judgment will inure to the health, morals, and general welfare of the people. *Shealy v. Southern Ry. Co.*, 127 S. C. 15, 120 S. E. 561 (1924).

Where not palpably unjust.—This section does not limit the state's exercise of police power to enact and enforce laws to protect health, morals, safety, and general welfare of the public, where such laws or regulations are not palpably arbitrary, unjust, or unreasonable, and do not unjustly or unreasonably impair private constitutional rights. *Ford v. Atlantic Coast Line Ry. Co.*, 169 S. C. 41, 168 S. E. 143 (1932), affirmed in 287 U. S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933).

Through antitrust legislation.—Section 66-51, prohibiting trust or combinations with a view to lessen or which tend to lessen full and free competition, is an ex-

ercise of police power in defining, limiting, governing, or destroying trusts and monopolies, and is not in violation of this amendment. *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455 (1905).

Or by regulating, taxing, and policing corporate business.—This amendment does not preclude the state from exercising very extensive power in regulating, taxing, and policing the business of a corporation. It permits a single foreign corporation to be expelled from the state by a special act and allows classification for the purposes of taxation. *Southern Bell Tel. & Tel. Co. v. Calhoun*, 287 F. 381 (1923).

Applied in *Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929); *Atkinson v. Southern Express Co.*, 94 S. C. 444, 78 S. E. 516 (1913); *Cantini v. Tillman*, 54 F. 969 (1893); *State v. Berlin*, 21 S. C. 292 (1884).

Cited in *Fairey v. Haynes*, 111 S. C. 132, 96 S. E. 694 (1918); *State v. Rouse*, 86 S. C. 344, 68 S. E. 629 (1910); *Kennington v. Catoe*, 68 S. C. 470, 47 S. E. 719 (1904); *Abbeville Elec., etc., Co. v. Western Electrical Supply Co.*, 66 S. C. 238, 44 S. E. 952 (1902); *Burnett v. Southern Ry. Co.*, 62 S. C. 281, 40 S. E. 679 (1902); *Des Portes v. Hunter*, 51 S. C. 250, 28 S. E. 530 (1897); *In re Langford*, 57 F. 570 (1893); *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918); *Matheny v. Aiken*, 68 S. C. 163, 47 S. E. 56 (1904); *Pineland Club v. Berg*, 110 S. C. 505, 96 S. E. 915 (1918); *Fripp v. Coburn*, 101 S. C. 312, 85 S. E. 774 (1915); *State v. Coop*, 52 S. C. 508, 30 S. E. 609 (1898); *State v. Aiken*, 42 S. C. 222, 20 S. E. 221 (1894); *Robertson v. Peeples*, 120 S. C. 176, 115 S. E. 300 (1919); *Spartanburg v. South Carolina Gas & Elec. Co.*, 130 S. C. 125, 125 S. E. 295 (1924); *Fowler v. Anderson*, 131 S. C. 473, 128 S. E. 410 (1925); *Barringer v. Fidelity & Deposit Co.*, 161 S. C. 4, 159 S. E. 373 (1931); *Thomas v. Atlantic Coast Line R. Co.*, 168 S. C. 185, 167 S. E. 239 (1933); *State v. Rawleigh Co.*, 172 S. C. 415, 174 S. E. 385 (1934); *Pacolet Mfg. Co. v. Query*, 174 S. C. 359, 177 S. E. 653 (1934); *Wallace v. Sumter County*, 189 S. C. 395, 1 S. E. (2d) 345 (1939); *State v. Yetter*, 192 S. C. 1, 5 S. E. (2d) 291 (1939); *State v. Osborne*, 195 S. C. 295, 11 S. E. (2d) 260 (1940); *State v. Meredith*, 197 S. C. 351, 15 S. E. (2d) 678 (1941); *Follett v. McCormick*, 321 U. S. 573, 64 S. Ct. 717, 88 L. Ed. 938 (1944); *South Carolina Power Co. v. Baker*, 212 S. C. 358, 46 S. E. (2d) 278 (1948).

II. PRIVILEGES AND IMMUNITIES.

Amendment secures citizenship rights to negro.—The leading purpose in the adoption of this and the following amendments to the Constitution of the United States is to secure to persons of African descent the full enjoyment of the privileges of citizenship, including the right to vote. *Mills v. Green*, 67 F. 818 (1895), reversed on other grounds in 69 F. 852 (1895), appeal dismissed in 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895).

Either at law or in equity.—The equity jurisdiction of the Federal courts cannot take cognizance of a suit by a colored person on behalf of himself and others similarly situated against the officers of the state of which he and such others are citizens to restrain such officers from acting under a statute of that state claimed to violate this and the following amendment by abridging or denying his right to vote, since he has an adequate remedy at law. *Gowdy v. Green*, 69 F. 865 (1895), appeal dismissed in 17 S. Ct. 994, 41 L. Ed. 1179 (1897).

Bill must allege infringement of property or civil rights.—Where a bill is brought to restrain a State election officer from discharging certain duties relative to enforcement of State registration laws and where the plaintiff fails to allege infringement of property or civil rights, such bill cannot be maintained in a court of equity. *Green v. Mills*, 69 F. 852 (1895), appeal dismissed in 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895).

Poll tax is allowed.—Even if payment of a poll tax is a prerequisite to voting, this does not deny any privilege or immunity under this amendment. *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

Religious views may not be barred.—A state or municipality may not by statute or ordinance wholly debar the right to preach or to disseminate religious views. *Gaffney v. Putnam*, 197 S. C. 237, 15 S. E. (2d) 130. See also, *Follett v. McCormick*, 321 U. S. 573, 64 S. Ct. 717, 88 L. Ed. 938 (1944).

Emigrant agents may be licensed.—Prohibiting the business of emigrant agent without a license is not in violation of this amendment, as abridging the privileges of citizens. *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902).

And mortgage descriptions regulated.—Section 45-151, providing that no chattel mortgage shall be valid unless the prop-

erty mortgaged shall be described in writing or typewriting, but not printed, on the face of the mortgage, is not unconstitutional and in violation of this amendment and S. C. Const., Art. 1, § 5, as an unreasonable restraint of the liberty of citizens to contract. *Rose v. Harllee*, 69 S. C. 523, 48 S. E. 541 (1904).

Accepting relief from employer does not bar damage suit.—Section 40-456, providing that acceptance of benefits by an injured employee from employer maintaining a relief department for employees shall not bar recovery of damages for the injuries sustained, is not an unreasonable interference with the right of contract and does not violate this amendment or S. C. Const., Art. 1, § 5. *Miller v. Atlantic Coast Line R. Co.*, 90 S. C. 249, 73 S. E. 71 (1911), affirmed in 231 U. S. 741, 34 S. Ct. 318, 58 L. Ed. 462 (1913).

III. DUE PROCESS OF LAW.

A. Scope of Clause.

Amendment should be liberally construed.—In view of the importance of this amendment, which guarantees a citizen against being deprived of his property without due process of law to protect citizens from arbitrary governmental action, it should be liberally construed. *Southern Bell Tel. & Tel. Co. v. Calhoun*, 287 F. 381 (1923).

Definition of due process.—Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

Due process requires proper hearing and trial.—Due process of law requires that a person shall have a reasonable opportunity to be heard by a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

"Due process of law", as provided for in this amendment, is afforded litigants given opportunity to be heard at any time before entry of final judgment. *Shealy v. Seaboard, etc., Ry. Co.*, 131 S. C. 144, 126 S. E. 622 (1924).

Of issues alleged to violate amendment.—A party affected by an ordinance is entitled to show that it is so unreasonable

as to amount to a confiscation of property under the guise of regulation, in violation of this amendment. *State v. Earle*, 66 S. C. 194, 44 S. E. 781 (1903).

Pleading violation confers jurisdiction.—In a suit by foreign railroad corporation against town to recover amount of paving assessment paid under protest, an allegation in the bill that enforcement and collection of assessment constituted both a taking of plaintiff's property without due process of law and a denial of equal protection of the laws under this amendment gives the Federal district court jurisdiction. *Carolina & N. W. Ry. Co. v. Clover*, 34 F. (2d) 480 (1929), reversed on other grounds in 46 F. (2d) 395 (1931).

Jurisdiction may be submitted to freely.—The due process clauses of the State and Federal Constitutions place no limitation upon the competency of a corporation to submit voluntarily to jurisdiction or upon the right of the State to require such submission as a prerequisite to doing business within the State. *Ezell v. Rust Engineering Co.*, 75 F. Supp. 980 (1948).

State may validly exercise police power.—All privileges and rights acquired by railroad companies are subject to a valid exercise of the State police power which itself is always subject to judicial scrutiny. Legitimate exercise of such police power by the State is not in contravention of the due process of law clause of this amendment. *Ford v. Atlantic Coast Line R. Co.*, 169 S. C. 41, 168 S. E. 143 (1932) affirmed in 287 U. S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933).

Or withdraw its consent to be sued.—The State can withdraw at any time its consent to be sued, and the right to withdraw it is not affected by the contract clause of the Constitution or, ordinarily, by the limitations of the Fourteenth Amendment. *Duke Power Co. v. South Carolina Tax Comm.* 81 F. (2d) 513 (1936), cert. denied 298 U. S. 669, 56 S. Ct. 834, 80 L. Ed. 1392 (1936).

And hire or discharge personnel without judicial approval.—The idea that due process requires judicial approval of matters relating to the hiring or discharge of a public employee is one which has no foundation either in reason or authority. *Shirer v. Anderson*, 88 F. Supp. 858 (1950).

B. Where Due Process Violated.

Arbitrary paving assessment.—A paving assessment plainly arbitrary or unreasonably discriminatory denies due process and equal protection, and will not be upheld.

Carolina N. & W. Ry. Co. v. Clover, 46 F. (2d) 395 (1931), appeal dismissed in 63 F. (2d) 1017 (1932).

Barbecue stand ordinance.—A city ordinance which made it unlawful for any person owning, operating, or employed at a barbecue stand located in any residential area of the city to allow it to remain open between eleven p. m. and six a. m., except on Saturdays when it could remain open until twelve p. m., and which defined "residential area" as any section of the city where two or more houses used for residential purposes are located on abutting property, was held unconstitutional insofar as it defined "residential area" because it unreasonably deprived the barbecue owner of the lawful use of his property without due process of law. *Fincher v. Union*, 186 S. C. 232, 196 S. E. 1 (1938).

Burdening particular corporation.—A state legislature cannot single out a corporation any more than it can single out a natural person for subjection to burdens and liabilities not cast on others similarly situated without contravening the limitations of this amendment. *Southern Bell Tel. & Tel. Co. v. Calhoun*, 287 F. 381 (1923).

Confession of murder.—Evidence revealed that murder confession was obtained by coercion so as to deny due process. *Harris v. South Carolina*, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1815 (1949).

Constructing telephone exchanges.—An act requiring the Southern Bell Telephone & Telegraph Company to construct and maintain telephone exchanges in two designated towns, when there were numerous other telephone companies in the state and the designated company was not obliged by its charter, franchise, or contract to construct such exchanges, deprives the company of its property without due process of law and is void. *Southern Bell Tel. & Tel. Co. v. Calhoun*, 287 F. 381 (1923).

Damages in vacating street.—A landowner is not entitled to recover damages because of the vacation of a street unless he has sustained a injury different in kind, and not merely in degree, from that suffered by the public at large. If it appears that there is a special injury, the owner may recover damages, notwithstanding his property does not abut on the part of the street vacated, because this amounts to a "taking" within the meaning of this amendment. *Rock Hill v. Cothran*, 209 S. C. 357, 40 S. E. (2d) 239 (1946).

Depriving sheriff of fees.—Acts depriving the sheriff of Sumter County of civil fees prior to July 1, 1935, were held uncon-

stitutional in *Hurst v. Sumter County*, 189 S. C. 376, 1 S. E. (2d) 238 (1939).

Act No. 131, 1933 Acts, enacted prior to the amendment of S. C. Const., Art. 3, § 34, subdiv. 9, which act devolved upon the chief of rural police of the county all duties, powers, and privileges formerly exercised by the sheriff with regard to collection of delinquent taxes, levying upon property of delinquent taxpayers, execution of deeds in case of sale, and which also provided that the sheriff of Sumter County should keep the books and records pertaining to tax collections, was held unconstitutional insofar as it deprived the sheriff of Sumter County of fees and commissions on delinquent taxes after its effective date. *Hurst v. Sumter County*, 189 S. C. 376, 1 S. E. (2d) 238 (1939).

Emptying sewage into river.—Under this amendment, a municipality is prohibited from emptying sewer pipes into a river to the detriment of property owners outside the city limits without compensation. *Matheny v. Aiken*, 68 S. C. 163, 47 S. E. 56 (1904).

Exempting lands from stock laws.—Complainant owned a tract of land which was valuable solely for grazing purposes. After he acquired it, the legislature passed an act exempting this land, with other tracts, from the provisions of the law requiring owners to keep their cattle fenced in, the effect of which was to require complainant either to fence his whole tract against cattle or to submit to have it trespassed upon without redress by any cattle whose owners chose to let them run at large. The act was held not to be within the police power of the state and violative of this amendment, inasmuch as it deprived complainant of his property without due process of law. *Smith v. Bivens*, 56 F. 352 (1893).

Flooding land of lower owner.—Where land of lower owner was injured by defendant's accumulating water behind unfinished dam and releasing same during flood time, there was a "taking" of property without due process which authorized recovery for resulting injury. *Taylor v. Lexington Water Power Co.*, 165 S. C. 120, 163 S. E. 137 (1932).

Insurrection wrongfully declared.—Where the Governor declared a state of insurrection in existence, used militia to take over the State Highway Department, and removed the State highway commissioners from office, a denial of due process obtained as to the commissioners and the Governor's action contravened this amendment. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

Law case wrongfully ruled out.—Where a North Carolina case was wrongfully ruled out by trial judge because he mistakenly put the place of performance of the contract in South Carolina instead of North Carolina, the defendant was deprived of the benefit of due process of law. *Livingston v. Atlantic Coast Line R. Co.*, 176 S. C. 385, 180 S. E. 343 (1935).

License fees for foreign corporation.—In *State v. Liggett & Myers Tobacco Co.*, 171 S. C. 511, 172 S. E. 857 (1933), a statute imposing graduated fees upon authorized capital of foreign corporations for privilege of doing business was held to be unconstitutional as violative of due process of law.

Obtaining murder confession.—In *Harris v. South Carolina*, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1440 (1949), the U. S. Supreme Court held that a confession of murder, under the circumstances therein set out, was obtained in such manner as to be violative of the due process clause of this amendment.

Ordinance closing street.—An ordinance of a town purporting to authorize closing a street, in view of a contract between municipality and a railroad purporting to require municipality to close certain streets and the railroad to open others, violates this amendment prohibiting taking private property without just compensation or without due process, and the town is liable to a property owner for damages caused by closing the street. *Houston v. West Greenville*, 126 S. C. 484, 120 S. E. 236 (1923).

Requiring railroad to build connecting track.—Railroads cannot be required to build a connecting track under § 58-1145 unless it is established at a hearing, at which the railroads are given an opportunity to be heard, that the connection is necessary for the public good and that the amount of expenditure will not be confiscatory, since otherwise the order would constitute taking private property without due process in violation of this amendment. *Shealy v. Seaboard, etc., Ry. Co.*, 131 S. C. 144, 126 S. E. 622 (1924).

Suspending public officers.—In *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936), the court held that if §§ 1-702 and 14-315 of the Code were open to the construction that they granted to the Governor the power of indefinite suspension of officers without hearing, they would be against public policy and in the teeth of the manifest principles of this amendment.

Taking property without actual entry.—There may be a taking of property in the

constitutional sense although there has been no actual entry within its bounds and no artificial structure erected upon it. And when a public agency acting under authority of statute uses land which it has lawfully acquired for public purposes in such a way that neighboring real estate belonging to a private owner is actually invaded by superinduced additions of water, earth, sand, or other material, so as effectually to destroy or impair its usefulness, there is a taking within the meaning of the Constitution. *Baynham v. State Highway Dept.*, 181 S. C. 435, 187 S. E. 528 (1936).

Unfair business competition statute.—An act (§ 6626 of 1932 Code) directed against unfair discrimination between different purchasers of a commodity in general use for the purpose of injuring the business of a competitor was held to violate this constitutional provision, in that vague and indefinite language used in the act caused it to be unreasonable, arbitrary, and capricious in its effects. *State v. Standard Oil Co.*, 195 S. C. 267, 10 S. E. (2d) 778 (1940).

C. Where Due Process Not Violated.

Arrest without warrant.—An act authorizing arrest without warrant for freshly committed crime is not a taking of liberty without due process where persons are arrested after being discovered in act of violating law. *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

Auto lien for injuries.—Section 45-551, providing that when a motor vehicle is operated in violation of law or negligently or carelessly, and that when any one receives personal injuries thereby or when any property is damaged thereby, such damages shall be a lien on such motor vehicle next in priority to the lien for State and county taxes, recoverable in any court of competent jurisdiction with the right to attach such vehicle as provided by law for attachment, does not violate the due process of law provisions of this amendment. *Merchants' & Planters' Bank v. Brigman*, 106 S. C. 362, 91 S. E. 332 (1917).

Automobile license statute.—A statute which changes time for procuring automobile license, permitting deduction where previous license was obtained for a full year but not where previous license was only for six months, does not violate this amendment. *Heslep v. State Highway Dept.*, 171 S. C. 186, 171 S. E. 913 (1933).

Breach of fishing laws.—*Shipman v. Dupre*, 339 U. S. 321, 70 S. Ct. 640, 94 L. Ed. 877 (1950).

Collection and payment of checks.—In *Witt v. People's State Bank*, 166 S. C. 1,

164 S. E. 306 (1932), §§ 8-181 et seq. of the Code, relating to collection and payment by banks of checks and other instruments for the payment of money, were held not to violate this amendment.

Condemning land for depot.—An act granting a corporation the right to condemn lands for union depot purposes is not a violation of the Fourteenth Amendment of the Federal Constitution, the condemnation being for public use and the statute having made ample provision for the protection of property owners and compensation for property condemned. *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905).

Confession of murder.—Evidence did not show that murder confession was obtained by any means which would constitute a denial of due process. *State v. Judge*, 208 S. C. 497, 38 S. E. (2d) 715 (1946); *State v. Harris*, 212 S. C. 237, 47 S. E. (2d) 521 (1948).

Destroying gambling equipment.—A statute providing for the summary forfeiture and destruction of gambling apparatus is a valid exercise of the police power of the State, and is not in conflict with the Constitution as depriving the owner of his property without due process of law. *Durant v. Bennett*, 54 F. (2d) 634 (1931).

A statute authorizing summary destruction of slot machines if found by a magistrate to be gambling devices was held not unconstitutional as denying due process nor being an unconstitutional exercise of police power on the part of the State. *State v. Kizer*, 164 S. C. 383, 162 S. E. 444 (1932).

Electric power generation tax.—Statute imposing excise tax on persons, firms, or corporations manufacturing or generating electric power was held not unconstitutional under this section as depriving taxpayer of due process or equal protection of the laws. *Duke Power Co. v. Query*, 10 F. Supp. 669 (1935), affirmed in 81 F. (2d) 513 (1936), cert. denied 298 U. S. 669, 56 S. Ct. 834, 80 L. Ed. 1392 (1936).

Electric wire ordinance.—Where the evidence shows that stretching electric wires over and upon the roofs of buildings is extremely dangerous, both as being liable to originate fires and as obstructions to the extinguishment of fires otherwise originated, a city ordinance absolutely prohibiting such practice is a valid exercise of the police power not denying due process under this amendment. *Electric Imp. Co. v. San Francisco*, 45 F. 593 (1891).

Emergency bank statute.—Emergency

statute temporarily vesting in Governor the control of banks and forbidding legal proceedings against banks without Governor's approval was held not unconstitutional as depriving depositors of property without due process or as denying to them right of speedy remedy in court for wrong sustained. *State v. Gibbes*, 171 S. C. 209, 172 S. E. 130 (1933), affirmed in 290 U. S. 326, 54 S. Ct. 140, 78 L. Ed. 342 (1933).

Eminent domain statute.—A statute which provides that in eminent domain proceedings the condemnor can enter upon and use the land upon his payment or deposit of the amount awarded by referees was held not a violation of the due process clause, even though upon appeal from the award by the referees there is no provision for security to the condemnee for the payment by the condemnor of the amount of damages which may be assessed by the verdict of a jury. *Oakland Club v. South Carolina Public Service Authority*, 110 F. (2d) 84 (1940).

Ending terms of public officers.—In answer to the contention that the action of the General Assembly in terminating the terms of office of certain of the highway commissioners, whose terms have not expired, deprived those commissioners of their property without due process of law, it was held that, while it is true that under the decision of *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936), the title of the commissioner's office was held to be a property right entitled to protection of the due process clauses of the State and Federal Constitutions, it is due process for the legislature which created the office and fixed the term to change it at its will. The commissioners took title to the office subject to the knowledge that the legislature could abolish the office or provide for the election of members in a method different from that established in the Code of 1932. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

"Enrolled bill" rule.—In *Parrott v. Gourdin*, 205 S. C. 364, 32 S. E. (2d) 14 (1944), it was held that the application of the "enrolled bill" rule does not constitute a denial of due process.

Federal habeas corpus writ for state prisoner.—Where a person is arrested on a peace warrant from one state judge and committed to jail after hearing before another judge acting within his jurisdiction according to state practice, he cannot be released by a Federal district court on habeas corpus for deprivation of his liberty without due process of law contrary to this

amendment. *In re Enslow*, 45 F. 351 (1891).

Fertilizer analysis tags.—A statute requiring tags stating amount and analysis of each material or source to be placed on each container of fertilizer sold does not violate the due process provisions of this amendment. *National Fertilizer Ass'n v. Bradley*, 18 F. Supp. 263 (1936), affirmed in 301 U. S. 178, 57 S. Ct. 748, 81 L. Ed. 990 (1937).

Forbidding insurance company to operate funeral business.—In *Daniels v. Family Ins. Co.*, 336 U. S. 220, 69 S. Ct. 550, 93 L. Ed. 632 (1949), the United States Supreme Court held constitutional as not in violation of the due process and equal protection clauses an act prohibiting a life insurance company to operate or maintain a funeral business.

Highway condemnation proceedings.—The condemnation proceedings provided for in the Code permitting the State Highway Department to condemn private lands do not violate this amendment. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Judgment as vested right.—A judgment of this State more than ten years old is not a vested right, property, or contract as contemplated by the due process clause. *United States Rubber Co. v. McManus*, 211 S. C. 342, 45 S. E. (2d) 335 (1947).

Leasing public lands.—An act leasing land theretofore used as public square for erection of building to contain offices of county and home demonstration agents and other county offices or auditorium for public assemblage, free of rent, does not violate this amendment prohibiting the taking of property without due process of law. *Antonakas v. Anderson Chamber of Commerce*, 130 S. C. 215, 126 S. E. 35 (1924).

Mental anguish for telegram.—Section 58-255, authorizing actions against telegraph companies for mental anguish caused by negligence in transmitting or delivering messages, is not in violation of this amendment as class legislation. *Simmons v. Western Union Tel. Co.*, 63 S. C. 425, 41 S. E. 521 (1902).

Ordinance regulating keeping cows in town.—An ordinance regulating the keeping of cows within the town limits of Darlington does not violate this section. *Ward v. Darlington*, 183 S. C. 263, 190 S. E. 826 (1937).

Parking meter ordinance.—A city ordinance providing for parking meters to regulate the privilege of parking does not violate the due process clause of this section.

Owens v. Owens, 193 S. C. 260, 8 S. E. (2d) 339 (1940).

Penalty for receiving stolen goods.—It is not a denial of due process of law or of equal protection of the laws for the legislature by § 16-362 to make the penalty for receiving stolen goods imprisonment without the alternative of a fine, though differing in that respect from other offenses. *State v. Johnson*, 119 S. C. 55, 110 S. E. 460 (1919).

Presumption of fraudulent appropriation.—Section 16-364 of the Code, creating a presumption of fraudulent appropriation where officers and other persons charged with safekeeping of public funds fail to account for them as required by law, was held not to violate this amendment. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Process on foreign corporation.—Sections 10-424, 12-721, and 12-722 of the Code, concerning service of process on a foreign corporation, comply with the fairest concept of due process. *State v. Ford Motor Co.*, 208 S. C. 379, 38 S. E. (2d) 242 (1946).

Public improvements assessment.—The imposition of assessments for public improvements does not violate the Fourteenth Amendment to the Federal Constitution. *Cheraw v. Turnage*, 184 S. C. 76, 191 S. E. 831 (1937).

Punitive damages for negligence.—An act allowing punitive damages in actions for negligence of a railroad company is not unconstitutional as a taking of property without due process of law. *Osteen v. Southern Ry.*, 76 S. C. 368, 57 S. E. 196 (1907).

Railroad crossing requirements, etc.—Railroad companies may be required at their own expense not only to establish crossings, but also to abolish grade crossings, to build and maintain suitable bridges or viaducts, to carry highways newly laid out over their tracks, or to carry their tracks over such highways without being unlawfully deprived of property without compensation or due process. *Prosser v. Seaboard Air Line R. Co.*, 216 S. C. 33, 56 S. E. (2d) 591 (1949).

Railroad liability for fires.—Section 58-1198, making every railroad company liable for property injured by fire from its locomotives, but allowing it to insure any such property, is not a taking of property from a railroad without due process of law or a denial of equal protection within this amendment. *Mobile Ins. Co. v. Columbia & G. R. Co.*, 41 S. C. 408, 19 S. E. 858 (1894). See also, *McCandless v. Richmond & D. etc., R. Co.*, 38 S. C. 103, 16

S. E. 429 (1892); *Brown v. Carolina Midland Ry. Co.*, 67 S. C. 481, 46 S. E. 283 (1903).

Railroad negligence exception.—The following exception is not well taken: "To allow the plaintiff, after alleging a joint and concurrent tort by the railway company and its servants, to recover without evidence of such joint and concurrent tort, but simply on evidence of a negligent act of the servant in which the master *did* not participate and which he neither authorized nor ratified, would deprive the defendant railway company of its property without due process of law, contrary to this amendment, for this reason: it would deprive said company of the right of reimbursement from the defaulting servant which would otherwise exist." *Carson v. Southern Ry. Co.*, 68 S. C. 55, 46 S. E. 525 (1904), affirmed in 194 U. S. 136, 24 S. Ct. 609, 48 L. Ed. 907 (1904); *Dagnall v. Southern Ry. Co.*, 69 S. C. 110, 48 S. E. 97 (1904); *Reeves v. Southern Ry.*, 68 S. C. 89, 46 S. E. 543 (1904).

Recovery for pollution of property.—A landowner's right to recover under §§ 59-494 to 59-499 of the Code for the taking by pollution, and for the impairment of the value of his real estate by reason of such taking, affords him full and complete remedy and is due process of law. *Oates v. Easley*, 182 S. C. 91, 188 S. E. 504 (1936).

Regulations of board of fisheries.—*Shipman v. Dupre*, 339 U. S. 321, 70 S. Ct. 640, 94 L. Ed. 877 (1950).

Review of insurance ruling.—Former statutory provision for review of decision of Insurance Commissioner by certiorari or mandamus held not exclusive and not violative of due process clause as denying appeal to Federal courts. *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

School district tax.—Acts creating a school district and authorizing the levy of a tax for school purposes by a board of trustees on petition of twenty taxpayers, are not in violation of this amendment as depriving petitioner of his property without due process of law, nor as denying the equal protection of the laws, since the legislature has power to delegate its taxing power for specified purposes to the electors of subdivisions of the State without violation of such provisions. *Martin v. School Dist.*, 57 S. C. 125, 35 S. E. 517 (1900).

Statute governing railroad crossing accidents.—Section 58-1004, changing the common-law rule as to contributory negligence in actions involving accidents at railroad crossings, is not in violation of

this amendment prohibiting the deprivation of life, liberty, or property without due process of law. The right to have one's controversies determined by the existing rules of evidence is not a vested right, and reasonable changes may be made. *Drennan v. Southern Ry.*, 91 S. C. 507, 75 S. E. 45 (1912).

Statutory negligence presumption.—In *Ford v. Atlantic Coast Line R. Co.*, 169 S. C. 41, 168 S. E. 143 (1932), affirmed in 287 U. S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933), statutes construed as creating rebuttable presumption that a failure to give crossing signals was proximate cause of crossing collision were held not violative of due process clause of this section.

Stopping trains at station.—Where a railroad company has been notified, has appeared, and has contested a matter before the railroad commission, an order of such commission requiring it to stop certain trains at a station does not deprive such railroad company of its property without due process of law within the meaning of this amendment. *Railroad Com'rs v. Atlantic Coast Line R. Co.*, 71 S. C. 130, 50 S. E. 641 (1905).

Suing unincorporated associations.—Sections 10-215, 10-429 and 10-1516, relating to the suing, service of process, and judgment and execution against an unincorporated association, do not contravene the due process clause of this amendment. *Edgar v. Southern Ry. Co.*, 213 S. C. 445, 49 S. E. (2d) 841 (1948).

Tax on places of amusement.—Sections 65-801 et seq., imposing a tax on places of amusement, are not invalid as taking property without due process of law in violation of S. C. Const., Art. 1, § 5, or of this amendment. *Curdts v. South Carolina Tax Comm.*, 131 S. C. 362, 127 S. E. 438 (1925), affirmed in 273 U. S. 669, 47 S. Ct. 471, 71 L. Ed. 831 (1927).

Tax on promissory notes.—Section 65-681, laying tax on documents, is not in violation of this amendment though applied to notes mailed outside of state with right of revocation. *Graniteville Mfg. Co. v. Query*, 44 F. (2d) 64 (1930), affirmed in 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126 (1931).

Taxes on condemned land.—Section 25-81 of the Code, providing that taxes due on land condemned by the State authority, including pro rata taxes for the year in which the land is condemned, is not violative of this amendment to the Constitution in the sense that it provides for paying the owner of the property taken an

amount less than the sum fixed as just compensation and therefore constitutes taking property without compensation. *South Carolina Public Service Authority v. 11,754.8 Acres of Land, More or Less*, 123 F. (2d) 738 (1941).

Teacher dismissal.—The State Board of Education's action in dismissing a teacher for cheating on a certification examination was held not a denial of due process, even though the statute attacked did not provide for judicial review of the Board's action, since such Board action is subject to judicial review by writ of certiorari. *Shirer v. Anderson*, 88 F. Supp. 858 (1950).

Telephone line construction.—Section 58-305, providing for the construction of telephone lines on the rights of way of railroad companies, is not unconstitutional as not furnishing due process of law because it does not provide for making all persons having an interest in the land parties or that the telephone company shall, after construction, help to maintain the right of way. *South Carolina & G. R. Co. v. American Tel. & Tel. Co.*, 65 S. C. 459, 43 S. E. 970 (1903).

Unemployment compensation act.—The unemployment compensation act of South Carolina does not violate this amendment as to due process and equal protection of the laws. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

IV. EQUAL PROTECTION OF THE LAWS.

A. Scope of Clause.

Clause protects all persons.—The equal protection of the laws extends to the guilty as well as the innocent, and to the criminal as well as the law-abiding citizen. *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

And must be enforced by courts.—When a right guaranteed under this amendment and under corresponding sections of the State Constitution has been violated, a Federal court is not only vested with the power but is also charged with the duty of protecting that right, even to the extent of declaring unconstitutional an enactment of the State legislature. *Southern Bell Tel. & Tel. Co. v. Calhoun*, 287 F. 381 (1923).

By uniform rules.—If an ordinance is passed by a municipal corporation which upon its face restricts the right or dominion which the individual might otherwise exercise over his property without question, not according to any general or uni-

form rule but so as to make the due enjoyment of his own depend upon the arbitrary will of the governing authorities of the town or city, it is unconstitutional and void because it fails to furnish a uniform rule of action and leaves the right of property subject to the despotic will of city authorities who may exercise it so as to give exclusive profits or privileges to particular persons. *Schlösser v. Post Office Adv. Co. v. Rock Hill*, 190 S. C. 92, 2 S. E. (2d) 392 (1939).

With respect to education.—A negro is entitled to the same opportunity and facilities afforded to whites for obtaining a legal education by and in the State of South Carolina. *Wright v. Board of Trustees*, 72 F. Supp. 948 (1947).

And also ad valorem taxes.—Constitutional requirements, both State and Federal, as to equality and uniformity are in strictness applicable only to ad valorem taxes on property and not to excises. *Gregg Dyeing Co. v. Query*, 166 S. C. 117, 161 S. E. 588 (1931), affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

Taxes may not be tyrannical.—Where plaintiff wishes to show tax unconstitutional because of arbitrary discrimination, the plaintiff must be able to satisfy the court that the classification has its origin in nothing better than whim, fantasy, and tyrannical exercise of arbitrary power before the tax in question will be stricken down. *Marshall v. South Carolina Tax Com'r*, 178 S. C. 57, 182 S. E. 96 (1935).

But must be reasonably applied.—A state may classify railroad corporations separately from other corporations for purposes of taxation, but such classification must have reasonable relation to some proper legislative purpose. *Piedmont & N. Ry. v. Query*, 56 F. (2d) 172 (1932).

B. Where Equal Protection Violated.

Billboard ordinance.—In *Schlösser v. Post Office Adv. Co. v. Rock Hill*, 190 S. C. 92, 2 S. E. (2d) 392 (1939), a city ordinance which read, "Hereafter it shall be unlawful to erect or maintain any billboard facing any public street or other public place within the corporate limits of the city without having first obtained from the city council a permit to do so," was held to violate this amendment because it vested in the city council a discretion which was purely arbitrary.

Damage suit against State.—An act permitting one person to bring an action against the State for damages to his automobile is in effect granting a special privi-

lege to one citizen of the State in violation of the equal protection of laws clauses of this amendment and S. C. Const., Art. 1, § 5, notwithstanding S. C. Const., Art. 17, § 2, providing that the General Assembly may direct in what manner claims against the State may be established and adjusted. *Sirrine v. State*, 132 S. C. 241, 128 S. E. 172 (1925).

Democratic Party primaries.—Where the State legislature repealed all laws relating to primary elections, and where a negro was denied the right to vote in a primary election because of the rules of the Democratic Party which limited primary elections to white persons, the negro was held entitled to injunctive relief as the primary elections were still part of the election machinery of the State. *Rice v. Elmore*, 165 F. (2d) 387 (1947), cert. denied 333 U. S. 875, 68 S. Ct. 905, 92 L. Ed. 1151 (1948).

Regulating hours of workers.—Act No. 943 of the 1938 Acts, which regulates the hours of workers, is invalid as it violates this section because it is not a proper exercise of the public power of the State and the classifications therein are arbitrary and without reasonable basis. *Gasque v. Nates*, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

Statute of limitations on salaries.—Acts 1938, p. 1893, which fixed a period of limitations for actions against counties for salaries, fees, etc., but which excluded from its operation claims against four counties of the State, violated the equal protection and due process clauses of the State and Federal Constitutions. *Gillespie v. Pickens County*, 197 S. C. 217, 14 S. E. (2d) 900 (1941).

Statute of limitations on wage claims.—In *Davis v. Rockton & Rion R.R.*, 65 F. Supp. 67 (1946), affirmed in 159 F. (2d) 291 (1946), the court held invalid as a denial of equal protection of the laws a special State statute of limitations on claims brought under the Federal Fair Labor Standards Act.

A statute of limitations is unconstitutional when directed exclusively at claims arising under Federal law, and this is particularly true when the statute is discriminatory in its effect in favor of state claims and against Federal claims. *Rockton & Rion Ry. v. Davis*, 159 F. (2d) 291 (1946).

Suits against foreign corporations.—A statute which permits suits to be maintained against foreign corporations in any county of the State, but which limits the place of trial of actions against individuals

and domestic corporations to counties through which they operate, manifestly denies the equal protection of the laws within the meaning of this constitutional provision. *Windham v. Pace*, 192 S. C. 271, 6 S. E. (2d) 270 (1939).

Tax on contract hauling.—An act imposing a tax on contract hauling, which exempted farmers, dairymen, and lumbermen from such tax, was held invalid as an unreasonable classification. *Nutt v. Ellerbe*, 56 F. (2d) 1058 (1932).

C. Where Equal Protection Not Violated.

Appraisal of mortgaged property.—No denial of equal protection of the laws results from not applying the statute which called for appraisal of mortgaged property after sale, where such land sold was not located within the State. *Fidelity-Bankers Trust Co. v. Little*, 178 S. C. 133, 181 S. E. 913 (1935).

Bakery license tax.—A city license tax ordinance which required local bakeries to pay twenty-five dollars and out-of-town bakeries selling or delivering their products within the city to pay fifty dollars per year was held valid, since there was nothing to show that imposition of a higher license on nonresidents was unreasonable, capricious, or confiscatory. *American Bakeries Co. v. Sumter*, 173 S. C. 94, 174 S. E. 919 (1934).

Bonds for State building site.—Act No. 889, 1946 Acts [1946 (44) 2612], allowing counties required to furnish land for construction of new buildings for any State institution to issue bonds to pay for such land, was held not to violate this amendment. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

Business license tax.—A license tax which applies uniformly to all persons and property within the area to which it is applicable does not deny equal protection of the laws. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

Business tax on wholesalers.—The classification as to wholesalers set up by § 47-271 of the Code is neither arbitrary, capricious, nor unreasonable, and does not violate the equal protection clauses of this section and Art. 1, § 5 of the State Constitution. *Ponder v. Greenville*, 196 S. C. 79, 12 S. E. (2d) 851 (1941).

Carrier as agent of connecting carrier.—Section 58-574, making each carrier the agent of its connecting carrier from which it receives freight and liable for neglect of such connecting carrier, is not a viola-

tion of this amendment as denying to the carrier the equal protection of the law. *Venning v. Atlantic Coast Line R. Co.*, 78 S. C. 42, 58 S. E. 983 (1907). Editor's note.—This section was declared unconstitutional as to interstate commerce, in the above case, as a restraint on such commerce).

County exempt from stock law.—An act exempting a certain portion of a named county from the operation of the general stock law between certain dates in each year does not violate S. C. Const., Art. 1, § 5, and this amendment by denying the equal protection of the laws because it imposes on citizens in said exempt section the burden of fencing the cultivated lands when the same burden is not required of other citizens of the county. *Brown v. Tharpe*, 74 S. C. 207, 54 S. E. 363 (1906).

Delay in transporting freight.—Section 58-562, imposing a penalty on railroad companies for delay in transporting freight, does not contravene this amendment. *Thweat v. Atlantic Coast Line R. Co.* (S. C.) 67 S. E. 15 (1910); *McCutchen v. Atlantic Coast Line R. Co.*, 81 S. C. 71, 61 S. E. 1108 (1908).

Discretion of Insurance Commissioner.—In the exercise of discretion given him by statute (1942 Code § 7967, repealed by 1947 (45) 322), providing that before licensing an insurance company, he may require it to deposit an approved bond or securities and shall be satisfied that the applicant is qualified, safe, and solvent, the act of the Insurance Commissioner in requiring one applicant to deposit an approved bond and another to deposit approved securities is not a denial of the equal protection of the law guaranteed by this amendment. *State v. McMaster*, 94 S. C. 379, 77 S. E. 401 (1912), affirmed in 237 U. S. 63, 35 S. Ct. 504, 59 L. Ed. 839 (1915).

Failure to pay subcontractors.—Section 45-3021, providing that a contractor may be imprisoned for failure to pay his subcontractors, does not violate this amendment. *State v. Hertzog*, 92 S. C. 14, 75 S. E. 374 (1912).

Foreign insurance company agent.—An act providing the conditions on which a license to do business in the State may be issued to the agent of a foreign insurance company, and providing that the warrant of his appointment required to be filed with the comptroller general shall continue valid and irrevocable until another agent has been substituted in order that the company may continually have in the State an agent on whom process may be served,

confers no right on the company to continue business in the State after its license has expired so as to entitle it to the protection of this amendment providing that the State shall not deny to any person within its jurisdiction the equal protection of its laws. *Mut. Life Ins. Co. v. McMaster*, 84 S. C. 495, 66 S. E. 877 (1910).

Gasoline tax refund.—Section 65-1101, providing for refund of five cents of the gasoline tax to purchasers of gasoline used only in farm operations, does not violate the equal protection of the laws provision. *State v. Query*, 207 S. C. 500, 37 S. E. (2d) 241 (1946).

Graduated income tax.—A former section of the Code (see 1902 Code § 325) which placed a graduated tax on incomes was held not unconstitutional as denying equal protection of the laws required by this amendment, since the State legislature has the right to make reasonable classifications of persons and property for public purposes, provided they bear a reasonable relation to the purposes to be affected. If the constituents of each class are all treated alike under similar circumstances and conditions, the rule of equal protection of the law is satisfied. *Alderman v. Wells*, 85 S. C. 507, 67 S. E. 781 (1910).

Hairdresser regulation.—Section 56-452, relating to regulation of hairdressers and cosmetologists, does not violate this amendment. *State v. Ross*, 185 S. C. 472, 194 S. E. 439 (1937), decided prior to 1948 amendment to this section.

Hiring road construction labor.—A statute providing that, relative to the construction of highways in Richland County and whether the construction be by contract or otherwise, all laborers and employees, except officers, superintendents, or skilled mechanics who cannot be obtained in the county, shall be actual inhabitants of such county as far as practicable is merely suggestive or directory in the absence of any penalty to enforce it. And even if it is mandatory, it does not violate this amendment or S. C. Const., Art. 1, § 5, as the legislature, in directing the use or disposition of public property or funds of the State or a county raised by taxation upon the people of either, has the power to limit the benefits to be derived therefrom to the residents of the State or county. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Insurance business tax.—Where Congress passed an act giving the states full authority to regulate and tax the business of insurance, a statute taxing foreign in-

surance companies and not domestic insurance companies does not violate this amendment. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

Insurance license fees.—See *Prudential Insurance Co. v. Murphy*, 207 S. C. 324, 35 S. E. (2d) 586 (1945), affirmed in 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

Jury without negro members.—For case holding that this amendment was not violated where a jury convicted colored defendants without colored juror sitting on it, see *State v. Grant*, 199 S. C. 412, 19 S. E. (2d) 638 (1941).

Evidence did not show that there had been an exclusion of negroes from the jury in violation of this section of the Constitution. *State v. Gatlin*, 208 S. C. 414, 38 S. E. (2d) 238 (1946).

Law school education.—The court cannot lay down any definite rule as to just how the State College shall set up a law school. It is peculiarly a matter for the State to regulate and direct its own educational facilities. The only restriction to be put upon it is the very broad and very definite restriction that equal facilities must be given to white and colored. If the proposed law school at the State College places negro students on a parity with white students at the University, then the constitutional rights of the plaintiff and others who desire legal education will have been satisfied and the State of South Carolina will have performed its duty as required by the Constitution of the United States and the decisions of its courts. *Wrighten v. Board of Trustees*, 72 F. Supp. 948 (1947).

Motor carrier license fee regulation.—Statute regulating motor carriers which exempted farmers or dairymen hauling dairy or farm products, and also lumber haulers engaged in transporting lumber and logs from forest to shipping points, was held not unconstitutional as discriminatory. *State v. Hicklin*, 168 S. C. 440, 167 S. E. 674 (1933), affirmed in 290 U. S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933).

Motor vehicle weight regulation.—A statute regulating the width and weight of motor vehicles was held not to violate this amendment for the State legislature, in adopting this regulation, acted within its province, and the means of regulation chosen were reasonably adapted to the end sought. *South Carolina State Highway Dept. v. Barnell Bros.*, 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938), reh. denied 303 U. S. 625, 58 S. Ct. 483, 82 L. Ed. 702 (1938).

In *State v. John P. Nutt Co.*, 180 S. C. 19, 185 S. E. 25 (1935), an act regulating the size and weight of trucks was upheld as a valid exercise of the police power not in violation of this amendment to the Constitution, notwithstanding the fact that the defendant owned several trucks which were made illegal by the terms of the act.

Paying damages on freight.—Section 58-594, providing a penalty on common carriers for failure to pay or refusal to pay damages on freight within a certain time, is not in violation of this amendment as denying equal protection of law. *Porter v. Charleston & S. Ry. Co.*, 63 S. C. 169, 41 S. E. 108 (1902); *Seegers Bros. v. Seaboard, etc., Ry.*, 73 S. C. 71, 52 S. E. 797 (1905), affirmed in 207 U. S. 73, 28 S. Ct. 28, 52 L. Ed. 108 (1907).

Paying wages other than by money.—Sections 40-132 and 40-133, declaring it unlawful for any corporation, person, or firm to issue or circulate for payment of wages any order, check, memorandum, or evidence of indebtedness payable otherwise than in lawful money of the United States, unless the same is negotiable in cash or in goods at the option of the holder at the store of such firm, etc., do not violate this amendment guaranteeing equal protection of the laws. *Johnson, Lytle & Co. v. Spartan Mills*, 68 S. C. 339, 47 S. E. 695 (1904).

Presumption of negligence as to railway crossing collision.—In *Ford v. Atlantic Coast Line R. Co.*, 169 S. C. 41, 168 S. E. 143 (1932), affirmed in 287 U. S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933), a statute construed as creating a rebuttable presumption that failure to give crossing signals was the proximate cause of a crossing collision was held not repugnant to equal protection of laws clause because such presumption applies only to railroads and not to motor carriers or others.

Probate court estate settlement fees.—Section 27-319 of the Code, in effect a local inheritance tax law, is entirely uniform in its application within the territory to which it applies, and thus does not run counter to the equal protection and due process clauses of the Constitution. *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

Railroad for corporate use only.—Section 12-103, giving corporations organized under Title 12, Chapter 2 the power to construct railroads and canals for their own use and to effect a crossing with any existing railroad or public road, but giving no power to condemn lands except for crossing existing railroads or public roads, is not in vio-

lation of this amendment as denying equal protection of the laws because it denies to existing railroads the right to condemn crossing over tramroads, electric railways, turnpikes, and canals. *Alderman & Sons Co. v. Wilson Lumber Co.*, 77 S. C. 165, 57 S. E. 756 (1907).

Subdistrict improvement costs.—Where in an improvement district a new subdistrict is formed or one already existing is enlarged, those owning property therein are not entitled to be heard on distribution of the costs of the sewer systems among the different properties in the district. Respecting this the legislature itself has fixed the basis of assessment, and has determined that the cost of these improvements should be borne by a uniform assessment on all property within the district. It is not necessary, therefore, to determine whether one lot of land will be benefited more than another, nor to apportion the burden of the costs among the particular property owners. *Sanders v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

Suit against foreign corporations.—A statute relating to venue is not unconstitutional as discriminatory because it singles out individuals and domestic and foreign corporations operating as motor carriers and permits actions to be maintained against them in counties other than those in which they reside or have an agent and maintain an office, while other individuals or corporations making the same or similar use of the highways, but not operating as motor carriers for hire, may be sued only in the county in which they reside or maintain an office and have an agent. This classification is not arbitrary or unreasonable. *Windham v. Pace*, 192 S. C. 271, 6 S. E. (2d) 270 (1939).

Tax exempt stadium bonds.—An act authorizing city to construct a stadium, and exempting from taxation bonds issued therefor, was held not invalid because constituting unfair discrimination against bonds of other business enterprises. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Tax on dividends and interest.—Tax on dividends and interest received by individuals in excess of one hundred dollars is not unconstitutional for the reason that corporations, estates, and fiduciaries are exempted, for the two are in separate and distinct classes, and the legislature has exercised its discretion and power to classify in this respect. *Marshall v. South Carolina Tax Comm.*, 178 S. C. 57, 182 S. E. 96 (1935).

Tax on imported gasoline.—Section 65-1081 of the Code, imposing a tax on gasoline imported into the State and stored for future consumption, was held not unconstitutional as discriminatory. *Gregg Dyeing Co. v. Query*, 166 S. C. 117, 164 S. E. 588 (1931), affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

Usury law penalty.—When § 8-9, providing for penalty for violations of usury law, and § 30-203, pertaining to construction of words, are construed together, corporations are included within the usury provisions and

hence that section does not amount to a denial of equal protection of the laws. *State v. Riddle*, 160 S. C. 477, 158 S. E. 833 (1931).

Workmen's compensation residence requirement.—The requirement of § 72-169 of the Code, making an employee be a resident of this State before he can recover under the Workmen's Compensation Law for accidents occurring without the State, does not violate this amendment. *Tedars v. Savannah River Veneer Company*, 202 S. C. 363, 25 S. E. (2d) 235 (1943).

ARTICLE XV.

§ 1. Right to vote not to be abridged.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2. Power to enforce article.

The Congress shall have power to enforce this article by appropriate legislation.²³

Inhibition of negro voting.—Where a bill is brought to restrain a State election officer from discharging certain duties relative to enforcement of State registration laws and where the plaintiff fails to allege infringement of property or civil rights, such bill cannot be maintained in a court of equity. *Green v. Mills*, 69 F. 852 (1895), appeal dismissed in 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895).

State election machinery includes primaries.—Where the State legislature repealed all laws relating to primary elections

and a negro was denied the right to vote in a primary election because of Democratic party rules limiting primary elections to white persons, the court held that the negro was entitled to injunctive relief as the primary elections were still part of the election machinery of the State. *Rice v. Elmore*, 165 F. (2d) 387 (1947), cert. denied 333 U. S. 875, 68 S. Ct. 905, 92 L. Ed. 1151 (1948).

Cited in *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895).

ARTICLE XVI.

Income tax.

The Congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.²⁴

Quoted in *United States v. Woodside*, 34 F. Supp. 281 (1940), modified in 118 F. (2d) 963 (1941).

ARTICLE XVII.

Election of Senators.

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall

23. Proposed by Congress on February 26, 1869, and declared ratified on March 30, 1870.

24. Proposed by Congress on July 12, 1909, and declared ratified on February 25, 1913.

have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.²⁵

ARTICLE XVIII.

§ 1. National liquor prohibition.

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ 2. Power to enforce article.

The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ 3. Ratification within seven years.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.²⁶

ARTICLE XIX.

Woman suffrage.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce the provisions of this article by appropriate legislation.²⁷

Amendment itself does not confer suffrage.—This amendment, providing that the right to vote shall not be denied on account of sex, does not itself confer the right of suffrage upon women. It merely prohibits discrimination, leaving the states to confer the right. *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922).

Or permit jury duty.—Even if this amendment granted the right of suffrage to

women, it does not thereby give them the right to serve as jurors. *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922).

Excluded party only may raise jury duty issue.—The defendant in a criminal case cannot raise the question that the exclusion of woman from jury duty violated this amendment, since he is not a member of the alleged excluded class. *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922).

25. Proposed by Congress on May 13, 1912, and declared ratified on May 31, 1913.

26. Proposed by Congress on December 18, 1917, and declared ratified on January 29, 1919. Repealed by 21st Amendment.

27. Proposed by Congress on June 4, 1919, and declared ratified on August 26, 1920.

ARTICLE XX.

§ 1. Terms of office.

The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ 2. Time of convening Congress.

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

§ 3. Death of President elect.

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

§ 4. Election of the President.

The Congress may by law provide for the case of death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

§ 5. Effective date of sections 1 and 2.

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

§ 6. Ratification within seven years.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several states within seven years from the date of its submission.²⁸

ARTICLE XXI.

§ 1. National liquor prohibition repealed.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

²⁸. Proposed by Congress on March 2, 1932, and declared ratified on February 6, 1933.

§ 2. Transportation of liquor into "dry" state.

The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. Ratification within seven years.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.²⁹

Liquor is now regulated by states.—Under this amendment the matter of controlling alcoholic liquors is now completely vested in each state. *One Hundred Second Cavalry Officers Club v. Heise*, 201 S. C. 68, 21 S. E. (2d) 400 (1942).

ARTICLE XXII.**§ 1. Terms of office of the President.**

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President during the remainder of such term.

§ 2. Ratification within seven years.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several states within seven years from the date of its submission to the states by the Congress.³⁰

²⁹. Proposed by Congress on February 20, 1933, and declared ratified on December 5, 1933.

³⁰. Proposed by Congress on March 24, 1947, and declared ratified on March 1, 1951.

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Constitution

of the

State of South Carolina

1895

(As amended through the 1951 Session of the General Assembly)

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9. Property or credit of State shall not benefit sectarian institutions.
10. Gifts for educational purposes.
11. Gifts to State; assets of unclaimed estates or co-partnerships; direct tax; State school fund.
12. Income from sale or license for sale of liquors.

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9. Property of married women.
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THE STATE OF SOUTH CAROLINA:

At a Convention of the People of the State of South Carolina begun and holden at Columbia on the Tenth day of September, in the year of our Lord One Thousand Eight hundred and Ninety-five, and thence continued by divers adjournments to the Fourth day of December in the year of our Lord One Thousand Eight hundred and Ninety-five.

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same.

Constitution is delineated by the people.—The Constitution "is a form of government delineated by the mighty hand of the people." *Greir v. Taylor*, 4 McC. (15 S. C. L.) 206.

Object of Constitution.—Its object is to lay down the fundamental principles and limit the powers of government. *Ex parte Lynch*, 16 S. C. 32 (1881).

It should be construed as a whole. *Smith v. McConnell*, 44 S. C. 491, 22 S. E. 721 (1895); *Norton v. Bradham*, 21 S. C. 375 (1884).

And contemporaneous construction of Constitution is entitled to weight. *State v. Williams*, 40 S. C. 373, 19 S. E. 5 (1893); *Simpson v. Willard*, 14 S. C. 191 (1880).

Courts must determine the constitutionality of a statute. *Byrne v. Stewart*, 3 De S. (3 S. C. Eq.) 466; *White v. Kendrick*, 1 Brev. (3 S. C. L.) 469.

But they will not declare a statute unconstitutional unless clearly so. *Columbia & G. R. Co. v. Gibbs*, 24 S. C. 60 (1885); *Peizer, Rogers & Co. v. Campbell*, 15 S. C. 581 (1881); *State ex rel. George v. Aiken*, 42 S. C. 222, 20 S. E. 221 (1894); *McCullough v. Brown*, 41 S. C. 220, 19 S. E. 458 (1894); *Maudin v. Greenville*, 42 S. C. 293, 20 S. E. 842 (1895); *Feldman & Co. v. Charleston*, 23 S. C. 57 (1885).

Where other grounds exist upon which the case can be decided.—*Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895); *Scottish American Mortg. Co. v. Deas*, 35 S. C. 42, 14 S. E. 486 (1892); *Ex parte Florence School*, 43 S. C. 11, 20 S. E. 794 (1895).

As where case presents two questions.—The rule in the United States Supreme Court is well settled that when a case pre-

sents two questions, one of which is a Federal question and the other is not, the Court will not take jurisdiction of the case if the view taken by the lower court of the latter question is decisive of the case. *Johnson v. Charleston & S. Ry. Co.*, 55 S. C. 152, 32 S. E. 2, 33 S. E. 174 (1899), *dis. op. of McIver, C. J.*

Unconstitutionality of an act must be raised by exceptions. *Frazee v. Beattie*, 26 S. C. 348, 2 S. E. 125 (1887).

To article, section, or principle in Constitution.—An exception alleging the unconstitutionality of an act must state the article, section, or principle of the Constitution with which it conflicts. *State v. Washington*, 55 S. C. 372, 33 S. E. 453 (1899).

It is not necessary in raising a constitutional question that the section and article infringed be stated in the pleadings and proceedings, since it is sufficient to state the principle involved. *Porter v. Charleston & S. Ry. Co.*, 63 S. C. 169, 41 S. E. 108 (1902).

And it cannot be first raised on appeal. *Tompkins v. Augusta & K. R. Co.*, 21 S. C. 420 (1884).

Constitutional questions not raised in or passed on by the circuit court will not be considered on appeal. *Burnett v. Southern Ry. Co.*, 62 S. C. 281, 40 S. E. 679 (1902); *Hunter v. Bamberg County*, 63 S. C. 149, 41 S. E. 26 (1902); *Key v. Carolina & N. W. R. Co.*, 165 S. C. 43, 162 S. E. 582 (1931).

Waiver of objection to constitutionality of act.—*Goodale v. Sowell*, 62 S. C. 516, 40 S. E. 970 (1902); *State v. Faile*, 43 S. C. 52, 20 S. E. 798 (1895); *Ex parte Hilton*, 64 S. C. 201, 41 S. E. 978 (1902).

ARTICLE I.

DECLARATION OF RIGHTS.

§ 1. Political power in people.

All political power is vested in and derived from the people only, therefore they have the right at all times to modify their form of government.

See Const. 1868, Art. I, § 1.

§ 2. Apportionment of Representatives.

Representation in the House of Representatives shall be apportioned according to population.

See Const. 1868, Art. I, § 34.

§ 3. Meeting of General Assembly.

The General Assembly ought frequently to assemble for the redress of grievances and for making new laws, as the common good may require.

See Const. 1868, Art. I, § 27.

§ 4. Religious worship; freedom of speech; petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government or any department thereof for a redress of grievances.

See Const. 1868, Art. I, §§ 6, 7, 9 and 10.

Section guarantees religious freedom to minority.—The right of the minority to continue to worship God in such manner and form as they have always done is guaranteed by the First Amendment to the Federal Constitution and by this section, both of which constitutional provisions use the same phraseology to extend the guaranty of freedom in matters pertaining to the worship of God. *Purcell v. Summer*, 54 F. Supp. 279 (1944).

Statute may not wholly bar practice of religion.—A state or municipality may not by statute or ordinance wholly debar the right to preach or to disseminate religious views. *Gaffney v. Putnam*, 197 S. C. 237, 15 S. E. (2d) 130 (1941).

Cited in *State v. Hondros*, 100 S. C. 242, 84 S. E. 781 (1915); *Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929); *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939); *State v. Meredith*, 197 S. C. 351, 15 S. E. (2d) 678 (1941).

§ 5. Privileges and immunities; protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

See Const. 1868, Art. I, § 12.

- I. General Consideration.
- II. Due Process of Law.
 - A. Scope of Due Process Clause.
 - B. Where Due Process Not Denied.
 - C. Where Due Process Denied.
- III. Equal Protection of Laws.
 - A. Scope of Equal Protection Clause.
 - B. Where Equal Protection Not Denied.
 - C. Where Equal Protection Denied.
- IV. Privileges and Immunities.

Cross Reference.

For treatment of above provisions in the United States Constitution, see notes to the Fourteenth Amendment.

I. GENERAL CONSIDERATION.

Construction.—This section must be construed with reference to principles of the common law. *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930).

The object of this section is to prevent discriminatory legislation. *Porter v. Charleston & S. Ry. Co.*, 63 S. C. 169, 41 S. E. 108 (1902).

The word "deprived" connotes want of consent. *Sandel v. State*, 115 S. C. 168, 104 S. E. 567 (1920).

Section prevents arbitrary legislative deprivation of rights.—The legislature cannot without violating this section arbitrarily deprive one of his fundamental rights appertaining to life, liberty, and property. *Simmons v. Western Union Tel. Co.*, 63 S. C. 425, 41 S. E. 521 (1902).

While the legislature is empowered to alter or amend the charter of a corporation, it is imperative upon it to respect the property of the corporation under the guaranties of this section in so doing. *Mays v. Seaboard, etc., Ry.*, 75 S. C. 455, 56 S. E. 30 (1906).

But permits reasonable police power legislation.—The legislature has inherent police power to pass any law it judges fit for the protection and welfare of its people in traveling over the public highways of the State. It is a matter within the discretion of the legislature of the State to determine what interests the public requires, to adopt such measures and means as are reasonably necessary for the protection of such interests, and to make reasonably safe the traveling public. *Merchants' & Planters' Bank v. Brigman*, 106 S. C. 362, 91 S. E. 332 (1917).

Such as reasonable regulation of contracts.—This section does not forbid the General Assembly to pass laws regulating the substance of contracts, the form in which they shall be made, and the manner of execution and attestation if the regulation tends to protect the public or a class of individuals from fraud or unfair dealing. *Rose v. Harlee*, 69 S. C. 523, 48 S. E. 541 (1904); *Miller v. Atlantic Coast Line R. Co.*, 90 S. C. 249, 73 S. E. 71 (1911).

An act providing that the description of property conveyed by chattel mortgage should be in writing or typewriting is not an arbitrary or unreasonable restraint on the right to contract. *Rose v. Harlee*, 69 S. C. 523, 48 S. E. 541 (1904).

Appeal.—The Supreme Court will not consider the provisions of this section on appeal where they were not raised in the circuit court below. *Burnett v. Southern Ry. Co.*, 62 S. C. 281, 40 S. E. 679 (1902).

For additional related cases, see *Hill v. City Council*, 59 S. C. 396, 38 S. E. 11 (1901); *Holler v. Rock Hill School Dist.*, 60 S. C. 41, 38 S. E. 220 (1901); *Riley v. Charleston Union Station Co.*, 67 S. C. 84, 45 S. E. 149 (1903); *Severance v. Murphy*, 67 S. C.

409, 46 S. E. 35 (1903); *Railroad Com'rs v. Atlantic Coast Line R. Co.*, 71 S. C. 130, 50 S. E. 641 (1905); *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905); *Columbia, N. & L. R. Co. v. Laurens Cotton Mills*, 82 S. C. 24, 61 S. E. 1089, 62 S. E. 1119 (1908); *Jellico v. Com'rs*, 83 S. C. 481, 65 S. E. 725 (1909); *Lyon v. Patterson*, 102 S. C. 525, 87 S. E. 306 (1915); *Fairey v. Haynes*, 111 S. C. 132, 96 S. E. 694 (1918); *State v. Ferri*, 111 S. C. 219, 97 S. E. 512 (1918); *Mullinax v. Hambright*, 115 S. C. 22, 104 S. E. 309 (1920); *State v. Harvey*, 128 S. C. 494, 122 S. E. 860 (1924); *Benton v. Yarbrough*, 128 S. C. 481, 123 S. E. 204 (1924).

Applied in *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

Stated in *Cowart v. City Council*, 67 S. C. 35, 45 S. E. 122 (1903); *Spartanburg v. Cudd*, 132 S. C. 264, 128 S. E. 360 (1925); *Matheny v. Aiken*, 68 S. C. 163, 47 S. E. 56 (1904); *State v. McMaster*, 84 S. C. 495, 66 S. E. 877 (1910); *Pineland Club v. Berg*, 110 S. C. 505, 96 S. E. 915 (1918); *State v. Gossett*, 117 S. C. 76, 108 S. E. 290 (1921); *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923).

Cited in *State v. Cheraw & D. R. Co.*, 54 S. C. 564, 32 S. E. 691 (1899); *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900); *Fowler v. Anderson*, 131 S. C. 473, 128 S. E. 410 (1925); *Ideal Theater v. Southern Enterprises*, 132 S. C. 352, 128 S. E. 166 (1925); *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455 (1905); *Murph v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907); *Hopkins v. Clemson Agricultural College*, 77 S. C. 12, 57 S. E. 551 (1907); *Sturgiss v. Atlantic Coast Line R. Co.*, 80 S. C. 167, 60 S. E. 939, 1135, 61 S. E. 261 (1908); *Drennan v. Southern Ry.*, 91 S. C. 507, 75 S. E. 45 (1912); *Webber v. Jonesville*, 94 S. C. 189, 77 S. E. 857 (1913); *State v. Rouse*, 86 S. C. 314, 68 S. E. 629 (1910); *Robertson v. Peeples*, 120 S. C. 176, 115 S. E. 300 (1919); *In re Langford*, 57 F. 570 (1893); *Duke Power Co. v. Query*, 10 F. Supp. 669 (1935); *Duke Power Co. v. Rutland*, 60 F. (2d) 194 (1932); *State v. Riddle*, 160 S. C. 477, 158 S. E. 833 (1931); *State v. Huntley*, 167 S. C. 476, 166 S. E. 637 (1932); *State v. Liggett & Myers Tobacco Co.*, 171 S. C. 511, 172 S. E. 857 (1933); *State v. Rawleigh Co.*, 172 S. C. 415, 174 S. E. 385 (1934); *Payne v. Atlantic Greyhound Bus Lines*, 182 S. C. 58, 188 S. E. 426 (1936); *Wallace v. Sumter County*, 189 S. C. 395, 1 S. E. (2d) 345 (1939); *Marion v. Baxley*, 192 S. C. 112, 5 S. E. (2d) 573 (1939); *State v. Osborne*, 195 S. C. 295, 11 S. E. (2d) 260 (1940); *Gaffney v. Putnam*, 197 S. C. 237,

15 S. E. (2d) 130 (1941); Prudential Ins. Co. v. Murphy, 207 S. C. 324, 35 S. E. (2d) 586 (1945); Henderson v. Greenwood, 172 S. C. 16, 172 S. E. 689 (1934); Conway v. Lee & Drayton, 209 S. C. 11, 38 S. E. (2d) 914 (1946).

II. DUE PROCESS OF LAW.

A. Scope of Due Process Clause.

Requisites of due process.—By “due process of law” is meant a process which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and, whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observances of those general rules established in our system of jurisprudence for the security of private rights. *State v. Earle*, 66 S. C. 194, 44 S. E. 781 (1903).

“Due process of law” means the law of the land. And the law of the land means that law which hears before it condemns, which proceeds upon inquiry, and which renders judgment only after trial. *South Carolina & G. R. Co. v. American Tel. & Tel. Co.*, 65 S. C. 459, 43 S. E. 970 (1903).

It includes common law in State's background.—“Due process of law” means the common law and the statute law existing in this State at the adoption of the Constitution. Altogether they constitute the body of the law and prescribe the course of justice to which a freeman is to be considered amenable in all times to come. *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898).

And involves defending and enforcing legal rights.—“Due process of law”, as a general rule, involves an opportunity before a proper tribunal under established procedure to defend or enforce a legal right. *Simmons v. Western Union Tel. Co.*, 63 S. C. 425, 41 S. E. 521 (1902).

Due process of law is afforded litigants if they have an opportunity to be heard at any time before final judgment is entered. *Shealy v. Seaboard, etc., R. Co.*, 131 S. C. 144, 126 S. E. 622 (1924).

Due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made

affecting his rights to life, liberty, or property. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Under safeguards for their protection.—Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of the law permit and sanction, under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

Interference with legal enjoyment of property is prohibited.—This section prohibits not only the actual taking of property without due process, but also the passing of laws or ordinances which interfere with legal use and enjoyment of such property. *Henderson v. Greenwood*, 172 S. C. 16, 172 S. E. 689 (1934).

B. Where Due Process Not Denied.

Admissibility of incompetent evidence.—The admission of incompetent testimony on the trial of a defendant who is not represented by counsel does not amount to a denial of due process of law within the meaning of this section. *State v. Owens*, 124 S. C. 220, 117 S. E. 536 (1922).

Arrest without warrant of occupants of car containing whiskey.—*State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

Authorizing sewer district bonds without hearing of property owners.—*Rutledge v. Greater Greenville Sewer Dist.*, 139 S. C. 188, 137 S. E. 597 (1927).

Bakery license tax ordinance.—A license tax ordinance which required local bakeries to pay twenty-five dollars and bakeries with established place of business out of the city, but selling or delivering their products within the city, to pay fifty dollars per year, is valid where there is nothing to show that the imposition of a higher license on such nonresidents was unreasonable, capricious, or confiscatory. *American Bakeries Co. v. Sumter*, 173 S. C. 94, 174 S. E. 919 (1934).

Bridge construction bonds.—Legislature directing the issuance of bonds does not violate due process clause. *Fripp v. Coburn*, 101 S. C. 312, 85 S. E. 774 (1915); *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

Compensation for out-of-State injury.—The requirement of § 72-169 of the Code that an employee be a resident of this State before he can recover under the Workmen's Compensation Law for accidents occurring without the State does not violate the constitutional guaranty of due process. *Tedars*

v. Savannah River Veneer Company, 202 S. C. 363, 25 S. E. (2d) 235 (1943).

Condemnation of land by State Highway Department.—The condemnation proceedings provided for in the Code, which permit the State Highway Department to condemn private lands, do not violate this section of the Constitution. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Condemnation of lands for drainage of swamp lands.—*Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916).

Construction and operation of hydroelectric project.—Statute providing for construction and operation of hydroelectric and navigation project by Public Service Authority is not unconstitutional as providing for confiscation of business of individuals and corporations engaged in electrical utility enterprises. *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935).

Creating school district and authorizing tax levy.—*Martin v. School Dist.*, 57 S. C. 125, 35 S. E. 517 (1900).

Damages against telegraph companies for mental anguish.—*Simmons v. Western Union Tel. Co.*, 63 S. C. 425, 41 S. E. 521 (1902).

Dismissal of appeal where death sentence suspended.—Act requiring Supreme Court clerk to notify Penitentiary superintendent of dismissal of appeal suspending execution of death sentence was held not unconstitutional as abridging appellant's privileges and immunities, or denying him due process or equal protection of law, because Supreme Court was not in session until four days before date fixed for execution. *Ex parte Howell*, 168 S. C. 197, 167 S. E. 230 (1932).

Dividing county into representation areas.—Section 14-1162 of the Code, dividing Charleston County into five areas of representation for election of members to the county council, is not violative of the due process and equal protection clauses. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Emergency statute temporarily vesting in Governor control of banks and forbidding legal proceedings against banks without Governor's approval was held not unconstitutional as depriving depositors of property without due process or as denying them the right of speedy remedy in court for wrong sustained. *State v. Gibbes*, 171 S. C. 209, 172 S. E. 130 (1933).

Ending terms of office of highway commissioners.—Where it was contended that the action of the General Assembly in ending the terms of office of certain of the highway commissioners, whose terms had

not expired, deprived those commissioners of their property without due process of law, it was held that while it is true that under the decision of *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936), the title of the commissioner's office was held to be a property right entitled to protection of the due process clauses of the State and Federal Constitutions, it is due process for the legislature that created the office and fixed the term to change it at its will. The commissioners took title to the office subject to the knowledge that the legislature could abolish the office or provide for the election of members in a method different from that established in the Code of 1932. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Extension of municipal boundaries.—The extension of the boundaries of a municipal corporation is not unconstitutional as depriving people in the annexed territory of their property without due process of law. *Harrell v. Columbia*, 216 S. C. 346, 58 S. E. (2d) 91 (1950).

Financing State highway construction through gasoline tax.—*State v. Mooror*, 152 S. C. 455, 150 S. E. 269 (1929).

Imposing tax on place of amusement.—*Curdts v. South Carolina Tax Comm.*, 131 S. C. 362, 127 S. E. 438 (1925).

Judgment more than ten years old as property right.—A judgment more than ten years old is not a vested right, property, or contract as contemplated by the due process clause. *United States Rubber Co. v. McManus*, 211 S. C. 342, 45 S. E. (2d) 335 (1947).

Leasing State lot for erection of buildings.—*Antonakas v. Anderson Chamber of Commerce*, 130 S. C. 215, 126 S. E. 35 (1924).

Licensing of coin-operated devices.—The appropriation act of 1939 [1939 (41) 650], in providing for the licensing of coin-operated devices, did not violate this section of the Constitution. *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939). (Editor's note.—For statutory counterpart of above cited act, see §§ 5-660 to 5-664.)

Making motor vehicle inflicting injury liable for damages.—*Merchants' & Planters' Bank v. Brigman*, 106 S. C. 362, 91 S. E. 332 (1917).

Murder confession.—For case where the evidence did not show murder confession of accused to be obtained in violation of due process, see *State v. Judge*, 208 S. C. 497, 38 S. E. (2d) 715 (1946).

Opening and closing arguments for State.—Permitting the assistant counsel to make

opening and closing arguments for the State and to assist in the examination of witnesses does not deprive the accused of the right to a trial conducted by the officer charged with the conduct of such criminal prosecution. *State v. Gregory*, 172 S. C. 329, 174 S. E. 10 (1934).

Parking meter ordinance.—A city ordinance providing for parking meters to regulate the privilege of parking does not violate the due process clause of this section. *Owens v. Owens*, 193 S. C. 260, 8 S. E. (2d) 339 (1940).

Payment less than sum fixed as just compensation for condemned land.—Section 25-81 of the Code, providing for statement of taxes due on land condemned by the State authority, including pro rata taxes for the year in which the land is condemned, is not violative of this section of the Constitution in the sense that it provides for payment to the owner of the property taken an amount less than the sum fixed as just compensation and, therefore, allegedly constitutes taking of property without compensation. *South Carolina Public Service Authority v. 11,754.8 Acres of Land*, 123 F. (2d) 738 (1941).

Presumption of fraudulent appropriation of public funds.—Section 16-364 of the Code, creating presumption of fraudulent appropriation where officers and other persons charged with safekeeping of public funds fail to account for them as required by law, does not violate this section of the Constitution. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Presumption of proximate cause of railroad collision.—In *Ford v. Atlantic Coast Line R. Co.*, 169 S. C. 41, 168 S. E. 143 (1932), a statute, construed as creating a rebuttable presumption that the failure to give railroad crossing signals was proximate cause of crossing collision, was held not to violate due process clause of this section of the Constitution.

Punitive damages in actions for negligence of railroad.—*Osteen v. Southern Ry.*, 76 S. C. 368, 57 S. E. 196 (1907).

Regulating cows within town limits.—An ordinance regulating the keeping of cows within the town limits of Darlington does not violate this section. *Ward v. Darlington*, 183 S. C. 263, 190 S. E. 826 (1937).

Regulating size and weight of trucks.—In *State v. John P. Nutt Co.*, 180 S. C. 19, 185 S. E. 25 (1935), an act regulating the size and weight of trucks was upheld as a valid exercise of the police power not in violation of this section of the Constitution, notwithstanding that the defendant

owned several trucks which were made illegal by the terms of the act.

Requiring owner to connect property to sewer without hearing.—*Columbia v. Shaw*, 131 S. C. 462, 127 S. E. 722 (1925).

Statutes allowing recovery for taking land.—A landowner's right to recover under §§ 59-494 to 59-499 of the Code for the taking and impairment of the value of his real estate by reason of such taking affords him full and complete remedy and is due process of law. *Oates v. Easley*, 182 S. C. 91, 188 S. E. 504 (1936).

Statutes relating to collection and payment of checks.—In *Witt v. Peoples State Bank*, 166 S. C. 1, 164 S. E. 306 (1932), §§ 8-181 to 8-200 of the Code, relating to the collection and payment by banks of checks and other instruments for the payment of money, was held not to violate this section of the Constitution.

Submission of corporation to jurisdiction.—The due process clauses of the State and Federal Constitutions place no limitation upon the competency of a corporation to submit voluntarily to jurisdiction or upon the right of the State to require such submission as a prerequisite to doing business within the State. *Ezell v. Rust Engineering Co.*, 75 F. Supp. 980 (1948).

Suit against unincorporated association.—Sections 10-215, 10-429, and 10-1516, relating to the suing, service of process, judgment, and execution against an unincorporated association, do not contravene the due process clause of this section. *Edgar v. Southern Ry. Co.*, 213 S. C. 445, 49 S. E. (2d) 841 (1948).

Tax on income of foreign corporation from interstate operations within State.—*Western Union Tel. Co. v. Query*, 144 S. C. 234, 142 S. E. 509 (1927).

Tax on soft drink retailers.—*Wingfield v. South Carolina Tax Comm.*, 147 S. C. 116, 144 S. E. 846 (1928).

Unemployment Compensation law.—The Unemployment Compensation law does not violate this section as to due process and equal protection of the law. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

Unfair competition statutes.—Sections 66-93 and 66-94 of the Code, which authorize contracts fixing minimum resale prices for trade-marked goods and make actionable as unfair competition the selling of such commodities by any person at less than the fixed price, do not violate the due process clause of this section upon the alleged ground that they make contracts signed by the parties applicable to third parties who

do not sign the contract, since there is no constitutional right to sell free of legislative control. *Miles Laboratories v. Seignious*, 30 F. Supp. 549 (1939).

Zoning ordinance.—The zoning ordinance of the city of Charleston does not violate this section as to due process of law. *Momeier v. McAlister*, 203 S. C. 353, 27 S. E. (2d) 504 (1943).

C. Where Due Process Denied.

Acquisition of property by school district.—Sections 5 and 6 of Act No. 502, 1944 Acts, which permit a school district to acquire the absolute ownership of property and the require the citizens of other school districts to help pay for it without acquiring any legal interest whatever therein, constitute a denial of due process and equal protection of the laws. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

Barbecue stand ordinance.—A city ordinance, which made it unlawful for any person owning, operating, or employed at a barbecue stand located in any residential area of the city to allow it to remain open between 11:00 P. M. and 6:00 A. M., except on Saturdays when it may remain open until 12:00 midnight, and which defined "residential area" as any section of the city where two or more houses used for residential purposes are located on abutting property, was held unconstitutional in so far as it defined "residential area," because it unreasonably deprived the barbecue owner of the lawful use of his property without due process of law. *Fincher v. Union*, 186 S. C. 232, 196 S. E. 1 (1938).

Billboard on public street.—In *Schloss Poster Adv. Co. v. Rock Hill*, 190 S. C. 92, 2 S. E. (2d) 392 (1939), a city ordinance which read, "Hereafter it shall be unlawful to erect or maintain any billboard facing on any public street or other public place within the incorporate limits of the city without having first obtained from the city council a permit to do so." was held to violate this constitutional provision because it vested in the city council a purely arbitrary discretion.

If an ordinance is passed by a municipal corporation which upon its face restricts the right or dominion which an individual might otherwise exercise over his property without question, not according to any general or uniform rule but so as to make due enjoyment of such property depend upon the arbitrary will of the governing authorities of the town or city, it is unconstitutional and void because it fails to furnish a uniform rule of action and leaves the right of property subject to the despotic will of city

authorities who may exercise it to give exclusive profits or privileges to particular persons. *Schloss Poster Adv. Co. v. Rock Hill*, 190 S. C. 92, 2 S. E. (2d) 392 (1939).

City charter of Rock Hill.—The statutory charter of the city of Rock Hill is deficient insofar as its attempts to provide the procedure by which private property may be taken or by which just compensation should be paid, for it lacks the necessary essentials of due process. *Rock Hill v. Cothran*, 209 S. C. 357, 40 S. E. (2d) 239 (1946).

County board of education fund.—That portion of an act [1944 (43) 1368, § 2] which directed that an offset be made between all current operation deficits and balances of the several school districts, and which directed the difference placed to the credit of the county board fund subject to the order of the county board of education, was held violative of this section of the Constitution. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

Depriving sheriff of commissions on delinquent taxes.—Act No. 131 of the Acts of 1933, enacted prior to the amendment of S. C. Const., Art. 3, § 34, subdiv. 9, devolving upon the chief of rural police of Sumter County all duties, powers, and privileges exercised by the sheriff with regard to collection of delinquent taxes, levying upon the property of delinquent taxpayers, and execution of deeds in case of sale, and also providing that the sheriff of said county shall keep the books and records pertaining to tax collections, is unconstitutional insofar as it deprives the sheriff of Sumter County of fees and commissions on delinquent taxes after its effective date. *Hurst v. Sumter County*, 189 S. C. 376, 1 S. E. (2d) 238 (1939).

Discriminatory delegation of legislative power.—The delegation by the legislature to persons, groups, or organizations, unrelated to government, of power to appoint or elect public officers is invalid if there is no substantial and rational relation between the appointive or elective power and the function of government which the appointees or electees are to perform. Such delegation is discriminatory to the degree of violating the equal protection and due process clauses. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

Injury to land by released dam water.—Where land of lower owner was injured by defendant's accumulating water behind unfinished dam and then releasing such water during flood time, a taking of property without due process occurred which author-

ized recovery for resulting injury. *Taylor v. Lexington Water Power Co.*, 165 S. C. 120, 163 S. E. 137 (1932).

Insurrection declared to take over State Highway Department.—A state of insurrection declared by the Governor in order to take over the State Highway Department and remove the State highway commissioners from office was a denial of due process to such commissioners, and, therefore, the Governor's action contravened this section of the Constitution. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

Judge's order disposing of case on merits.—Where an order of a trial judge disposed of a case on its merits, it was held that it constituted a denial of due process because, whether the pleading of the respondents be treated as an answer or merely as a return, appellants were entitled to be heard after a trial of the facts held either before the circuit judge or before a master in the manner prescribed by law. *Latham v. York*, 210 S. C. 565, 43 S. E. (2d) 467 (1947).

Negotiable instruments statute.—Statute authorizing domestic forwarding banks to forward negotiable instruments directly to drawee banks in other cities for collection was held violative of due process since it discriminated against foreign banks, banks receiving for collection items drawn on banks in same city, and parties sending drafts direct to bank for collection. *Ex parte Wachovia Bank & Trust Co.*, 160 S. C. 104, 158 S. E. 214 (1931).

Power of Governor to suspend officers without hearing.—In *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936), it was held that if § 1-702 of the Code granted to the Governor the power of indefinite suspension of officers without hearing, such section would be against public policy and in the teeth of the manifest principles of this section of the Constitution.

Railroad commission's order to restore train service.—Railroad commission's order requiring a railroad company to restore certain trains was held confiscatory in *Blease v. Charleston & W. C. R. Co.*, 146 S. C. 496, 144 S. E. 233 (1928).

Refusal of trial based on indictment.—Thus one demanding but refused the right to be tried only upon indictment presented by legal grand jury, where such indictment is legally required, is "deprived of life, liberty or property" without due process of law. *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930).

Regulating hours of workers.—Act No. 943 of the 1938 Acts, which regulates hours

of workers, is invalid under this section in that it is not a proper exercise of the public power of the State and the classifications therein are arbitrary and without reasonable basis. *Gasque v. Nates*, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

Requiring railroads to build industrial sidetracks.—*Mays v. Seaboard, etc., Ry.*, 75 S. C. 455, 56 S. E. 30 (1906).

Statute retroactive as to all estates not finally settled, which amended former law by providing that legitimate as well as illegitimate children could inherit from an illegitimate child of the same mother, was held unconstitutional as to heir entitled to estate at illegitimate intestate's death because depriving such heir of property without due process. *Muldrow v. Caldwell*, 173 S. C. 243, 175 S. E. 501 (1934).

Taking property without actual entry thereon.—There may be a taking of property in the constitutional sense although there has been no actual entry within its bounds and no artificial structure has been erected upon it. When a public agency acting under authority of statute uses land which it has lawfully acquired for public purposes in such a way that neighboring real estate, belonging to a private owner, is actually invaded by superinduced additions of water, earth, sand, or other material so as effectually to destroy or impair its usefulness, there is a taking within the meaning of the Constitution. *Baynham v. State Highway Dept.*, 181 S. C. 435, 187 S. E. 528 (1936).

III. EQUAL PROTECTION OF LAWS.

A. Scope of Equal Protection Clause.

Equal protection clauses admit wide scope of discretion. They avoid legislative enactments only when they are without any reasonable basis. *Witt v. People's State Bank*, 166 S. C. 1, 164 S. E. 306 (1932); *Ward v. Darlington*, 183 S. C. 263, 190 S. E. 826 (1937).

Meaning of "equal protection" clause.—The "equal protection" clause in this section means that no person or class of persons shall be denied the protection of the laws enjoyed by other persons or classes in the same place and under like circumstances. *Harrison v. Caudle*, 141 S. C. 407, 139 S. E. 842 (1927); *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935); *Ward v. Darlington*, 183 S. C. 263, 190 S. E. 826 (1937).

Legislature may classify citizens.—This section cannot be construed to deprive the law making department of the government of the power to make a classification of its

citizens. Thus laws may be passed, if applicable alike to all persons, natural or artificial, belonging to a given class, which are not violative of the provisions of the Constitution forbidding denial to any person of the equal protection of the laws. *Porter v. Charleston & S. Ry. Co.*, 63 S. C. 169, 41 S. E. 108 (1902); *McCandless v. Richmond & D. R. Co.*, 38 S. C. 103, 16 S. E. 429 (1904); *Blum v. Richland County*, 38 S. C. 291, 17 S. E. 20 (1893); *Brown v. Carolina Midland Ry. Co.*, 67 S. C. 481, 46 S. E. 283 (1903).

For public purposes.—The legislature has power to make a classification of persons or property for public purposes, provided such classification is not arbitrary, and bears reasonable relation to the purpose to be effectuated, and that the equality clause is not violated, when all within the designated class are treated alike. *Simmons v. Western Union Tel. Co.*, 63 S. C. 425, 41 S. E. 521 (1902); *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19 (1908).

If classification reasonably relates to legislative purpose.—Requirement of equal protection of the laws is fully complied with if the legislative classification bears a reasonable relation to the legislative purpose sought to be effected. *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930).

The equal protection of the laws guaranteed by this section is not violated where there is a classification which rests upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed. *Harrison v. Caudle*, 141 S. C. 407, 139 S. E. 842 (1927); *Laurens v. Anderson*, 75 S. C. 62, 55 S. E. 136 (1906); *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Even though some inequality results.—A classification having some reasonable basis does not offend this section merely because it is not made with mathematical nicety or because in practice it results in some inequality. *State v. Hertzog*, 92 S. C. 14, 75 S. E. 374 (1912).

And also if constituents of each class are treated alike.—*Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930); *Alderman & Sons Co. v. Wilson Lumber Co.*, 77 S. C. 165, 57 S. E. 756 (1907).

Since legislation may be limited to special class.—Legislation is not unequal nor discriminatory in the sense of the equality clause of the Constitution merely because it is special or limited to a particular class. *Simmons v. Western Union Tel. Co.*, 63 S. C. 425, 41 S. E. 521 (1902).

For example, building contractors are usually of a much less financial responsi-

bility than railroad and paving contractors. *State v. Hertzog*, 92 S. C. 14, 75 S. E. 374 (1912).

B. Where Equal Protection Not Denied.

Act dealing with landlords as class.—*State v. Elmore*, 68 S. C. 140, 46 S. E. 939 (1904).

Act making each carrier agent of connecting carrier.—*Venning v. Atlantic Coast Line R. Co.*, 78 S. C. 42, 58 S. E. 983 (1907); *Glenn v. Atlantic Coast Line Co.*, 96 S. C. 357, 80 S. E. 898 (1914).

Classification as to wholesalers.—The classification as to wholesalers established in §47-271 is not arbitrary, capricious, or unreasonable, and does not violate the equal protection clauses of this section and the Fourteenth Amendment to the Federal Constitution. *Ponder v. Greenville*, 196 S. E. 79, 12 S. E. (2d) 851 (1941).

Construction of city stadium.—An act authorizing city to construct stadium and exempting from taxation bonds issued therefor was held not invalid as constituting unfair discrimination against bonds of other business enterprises. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Exempting portions of county from general stock law.—*Utsey v. Hiott*, 30 S. C. 360, 9 S. E. 338 (1889); *Goodale v. Sowell*, 62 S. C. 516, 40 S. E. 970 (1902); *Brown v. Tharpe*, 74 S. C. 207, 54 S. E. 363 (1907).

Failure to appraise mortgaged land outside State.—It was not a denial of equal protection of laws not to apply the statute which called for appraisal of mortgaged property after sale, where such land was not located within the State. *Fidelity-Bankers Trust Co. v. Little*, 178 S. C. 133, 181 S. E. 913 (1935).

Hairdresser and cosmetologist statutes.—Sections 56-451 to 56-482, relating to regulations of hairdressers and cosmetologists, do not violate this section. *State v. Ross*, 185 S. C. 472, 194 S. E. 439 (1937). (Editor's note.—The above case was decided prior to the 1948 amendment to the cited Code sections.)

Imposing vehicle license tax in only one county.—*State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922).

Motor carrier regulation.—The fact that a statute which regulated motor carriers also exempted farmers or dairymen hauling farm or dairy products, as well as lumber haulers engaged in transporting lumber and logs from forest to shipping points, was held not to render such statute unconstitutional as discriminatory. *State v. Hicklin*, 168 S. C. 440, 167 S. E. 674 (1933).

"Pay-as-you-go" gasoline and automobile taxes.—*Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926); *Standard Oil Co. v. Spartanburg*, 66 S. C. 37, 44 S. E. 377 (1903).

Paying highway indebtedness by gasoline and motor vehicle taxes.—*State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929).

Penalizing carriers failing to pay freight damages on time.—*Porter v. Charleston & S. Ry. Co.*, 63 S. C. 169, 41 S. E. 108 (1902); *Seegers Bros. v. Seaboard, etc., Ry.*, 73 S. C. 71, 52 S. E. 797 (1905).

Penalizing railroad failing to transport goods on time.—*Sanford v. Seaboard, etc., Ry.*, 79 S. C. 519, 61 S. E. 74 (1908).

Probate court fee statute.—Section 27-319, in effect a local inheritance tax law and providing a schedule of probate court fees for the probate court of Spartanburg County, is entirely uniform in its application within the territory. *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

Refund of gasoline tax.—Section 65-1101, providing for partial refund of the imposed gasoline tax to purchasers of gasoline used only in farm operations, does not violate the equal protection of the law clause. *State v. Query*, 207 S. C. 500, 37 S. E. (2d) 241 (1946).

Requiring county highway to be constructed only by county residents.—*Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Requiring insurance company to deposit either bond or securities.—*State v. McMaster*, 94 S. C. 379, 77 S. E. 401 (1912).

State warehouse act for storing lint cotton only.—*State v. State Warehouse Comm.*, 92 S. C. 81, 75 S. E. 392 (1912).

Tax on gasoline imported into State.—Section 65-1081 of the Code, imposing a tax on gasoline imported into State and stored for future consumption, is not unconstitutional as discriminatory. *Gregg Dyeing Co. v. Query*, 166 S. C. 117, 164 S. E. 588 (1932).

Taxing electric power companies.—A statute which taxes companies producing electric current by water power and steam, without taxing gas companies and the comparatively insignificant companies which produce current by the use of internal combustion engines, cannot be said to make an arbitrary classification which denies the equal protection of the laws. *South Carolina Power Co. v. South Carolina Tax Comm.*, 52 F. (2d) 515 (1931).

Taxing or exempting municipality from taxation.—Legislation of the State taxing or exempting a municipality from taxa-

tion is not open to the objection that it offends the equal protection clause. *South Carolina Power Co. v. South Carolina Tax Comm.*, 52 F. (2d) 515 (1931).

C. Where Equal Protection Denied.

Discrimination in fishing law.—*State v. Higgins*, 51 S. C. 51, 28 S. E. 15 (1897).

Discrimination in punishment between landlord and laborer.—*State v. Williams*, 32 S. C. 123, 10 S. E. 876 (1890).

Exempting Confederate veterans from paying business licenses.—*Laurens v. Anderson*, 75 S. C. 62, 55 S. E. 136 (1905).

Exempting corporations from general penalty for Sunday sales.—*Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929). But see *State v. Hondros*, 100 S. C. 242, 84 S. E. 781 (1915).

Permitting one person to sue State for damaged automobile.—*Sirrine v. State*, 132 S. C. 241, 128 S. E. 172 (1925).

Statute of limitations in actions against counties for salaries.—Acts 1938, p. 1893, which fixed a period of limitation for actions against counties for salaries, fees, etc., but which excluded from its operation claims against four counties of the State, violated the equal protection and due process clauses of the State and Federal Constitutions. *Gillespie v. Pickens County*, 197 S. C. 217, 14 S. E. (2d) 900 (1941).

Unfair competition statute.—The unfair competition statute (1932 Code § 6626), directed against discrimination between different purchasers of a commodity in general use in order to injure the business of a competitor, violated this section because its vague and indefinite language caused it to be unreasonable, arbitrary, and capricious in its effects. *State v. Standard Oil Co.*, 195 S. C. 267, 10 S. E. (2d) 778 (1940).

IV. PRIVILEGES AND IMMUNITIES.

Emigrant agent's statute does not violate section.—The emigrant agent's act (now § 16-564 of the Code), prohibiting the carrying on of the business of emigrant agent without a license, is not in violation of this section as abridging the privileges of citizens. *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902).

Privileges and immunities clause applies to custody of children.—The privileges, immunities, and liberties protected by this section include the rights of parents to the custody of children given them by law as well as the liberty of the children from illegal restraint or custody after the parent has forfeited the right of custody. A stat-

ute authorizing the father to convey the custody of his children to another during minority against the mother's wishes, without permitting any judicial investigation by habeas corpus or equitable proceedings as to the rights of the mother and the children concerning their custody, would be a deprivation of liberty without due process of law. *Ex parte Tillman*, 84 S. C. 552, 66 S. E. 1049 (1910).

§ 6. Taxation.

All property subject to taxation shall be taxed in proportion to its value.

See Const. 1868, Art. I, § 36.

Cross reference.—As to constitutional provision concerning due process of law, see S. C. Const. Art. 1, § 55.

This section does not apply to property exempt from taxation. *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930).

Tax is distinguished from assessment.—Taxes, in the strict sense of the word, are imposed upon all property, both real and personal, for the maintenance of the government or some division thereof, while assessments are laid only on the property to be benefited by the proposed improvements. *Jackson v. Brceland*, 103 S. C. 184, 88 S. E. 128 (1916).

Assessment is prerequisite to legal tax.—Taxes are not to be laid merely upon taxable property, nor upon its actual value, but are to be laid upon its actual value as ascertained by an assessment made for the purpose of laying such tax. It is thus clear that an official valuation for taxation is essential to constitute a tax which must not only be certain in amount, but which must also be justly apportioned. *State v. Cheraw & D. R. Co.*, 54 S. C. 564, 32 S. E. 691 (1899).

And must be based on property valuation.—A system of special assessment by a municipal corporation is unconstitutional which results in taxation of property abut-

Scope of privileges and immunities clause.—In the right of freedom from unlawful restraint is embraced the right to the enjoyment of all those privileges and immunities which belong to the citizen of a free country. These privileges and immunities are from their nature incapable of limitation by exact definition. *Ex parte Tillman*, 84 S. C. 552, 66 S. E. 1049 (1910).

ting on the streets through which water mains are to be laid not in accordance to the valuation of such property, but because it will result in a benefit to the land owners whose land abuts on the streets. *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898).

Licensing coin-operated devices does not violate section.—Act No. 346, p. 650, 1939 Acts (Vol. 2, 1942 Code, p. 1496, § 110), which provides for the licensing of coin-operated devices, does not violate this section of the Constitution. *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939).

Business privilege tax as excise tax.—An annual license tax based on gross receipts for the privilege of doing business in a county, which tax was levied as a school district tax, was held to be an excise tax and not a property tax under this section. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

Cited in *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455 (1905); *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915); *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926); *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900); *Marion v. Baxley*, 192 S. C. 112, 5 S. E. (2d) 573 (1939).

§ 7. No tax without consent.

No tax, subsidy, charge, impost tax or duties shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled.

See Const. 1868, Art. I, § 37.

Meaning of "consent of the people".—In *Dial v. Watts*, 138 S. C. 468, 136 S. E. 891 (1927), the court held that the "representatives lawfully assembled" are the legislature with its plenary power and that "consent of the people" means the vote of all the people using the ballot with registration certificates and tax receipts. *Cothran v.*

West Dunklin Public School Dist., 189 S. C. 85, 200 S. E. 95 (1938).

Annexation statutes not violative of section.—Sections 47-11, 47-12, 47-14 to 47-19, and 47-24, relating to annexation of territory to a municipality, do not violate this section pertaining to constitutional protection against taxation without representation.

Harrell v. Columbia, 216 S. C. 346, 58 S. E. (2d) 91 (1950).

Dividing county into representation areas is valid.—Section 14—1162, dividing Charleston County into five areas of representation, does not contravene this section. Gaud v. Walker, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Establishing civil and criminal court for portion of Oconee County is not invalid

under this section. Glymph v. Smith, 170 S. C. 486, 170 S. E. 913 (1933).

Stated in Fripp v. Coburn, 101 S. C. 312, 85 S. E. 774 (1915).

Cited in Martin v. School Dist., 57 S. C. 125, 35 S. E. 517 (1900); Evans v. Beattie, 137 S. C. 496, 135 S. E. 538 (1926); Dial v. Watts, 138 S. C. 468, 136 S. E. 891 (1927).

§ 8. Attainder; ex post facto law.

No bill of attainder, *ex post facto* law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

See Const. 1868, Art. I, §§ 4, 21.

I. Impairment of Contracts.

A. General Consideration.

B. Application of Section.

II. Ex Post Facto Laws.

III. Forfeiture of Estates.

Cross References.

As to similar provisions in the Constitution of the United States prohibiting the states from certain powers, see U. S. Const., Art. 1, § 9. As to compensation rendered public officers for services on contracts, see S. C. Const., Art. 3, § 30.

I. IMPAIRMENT OF CONTRACTS.

A. General Consideration.

Liberty to contract is not absolute.—The constitutional guaranty of liberty to contract cannot be regarded as absolute in the sense that there can be no state regulation of matters as to which persons might desire to contract. There remains the state's police power which permits the legislature to enact laws for the general good of the citizens of the state, even though the incidental effect of regulation thereunder would be to deprive some individual of liberty or property. When this police power is properly exercised, the deprivation of life, liberty, or property is with due process of law. Similar principles apply to the constitutional prohibition against impairment of the obligation of a contract. Gasque v. Nates, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

Any deviation from contract impairs its obligation.—Any deviation from the terms of a contract by imposing conditions not expressed therein or dispensing with performance of those expressed impairs its obligation, however minute or apparently immaterial in its effect such deviation may

be. Martin v. Saye, 147 S. C. 433, 145 S. E. 186 (1928); Henry v. Alexander, 186 S. C. 17, 194 S. E. 649 (1937).

But impairment is not based on extent of change.—Objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of change in the contract which the law effects. Henry v. Alexander, 186 S. C. 17, 194 S. E. 649 (1937).

Contract is created by bond issue.—Where bonds are issued, a contract arises between the purchaser and the seller, the obligation of which cannot be impaired. Dove v. Kirkland, 92 S. C. 313, 75 S. E. 503 (1912); Welch v. Getzen, 85 S. C. 156, 67 S. E. 294 (1910).

Stated in Smith v. Greenville County, 189 S. C. 424, 1 S. E. (2d) 502 (1939).

Cited in State v. Coop, 52 S. C. 508, 30 S. E. 609, (1898); State v. Hondros, 100 S. C. 242, 84 S. E. 781 (1915); Paris Mountain Water Co. v. Greenville, 110 S. C. 36, 96 S. E. 545 (1918); State v. Moorner, 152 S. C. 455, 150 S. E. 269 (1929); Lyon v. Patterson, 102 S. C. 525, 87 S. E. 306 (1915); Rivers v. McIntire, 160 S. C. 462, 158 S. E. 816 (1931); Ex parte Sanders, 168 S. C. 323, 167 S. E. 154 (1932); Wallace v. Sumter County, 189 S. C. 395, 1 S. E. (2d) 345 (1939); Kirk v. Douglass, 190 S. C. 495, 3 S. E. (2d) 536 (1939); Carolina Music Co. v. Query, 192 S. C. 308, 6 S. E. (2d) 473 (1939); State v. Osborne, 195 S. C. 295, 11 S. E. (2d) 260 (1940); Welsh v. Western Union Tel. Co., 207 S. C. 102, 34 S. E. (2d) 398 (1935).

B. Application of Section.

Change of highway officers does not impair contract.—An act abolishing the Bogansville township highway commission and

devolving all of their duties on the advisory board and the county engineer does not conflict with this section forbidding the enactment of a law impairing the obligations of a contract, since every obligation issued or incurred lawfully by the commission will have to be paid by the authorities on whom the commission's duties have devolved. *Askew v. Smith*, 126 S. C. 159, 119 S. E. 378 (1923).

Nor does partial refund of gasoline tax.—Section 65-1101, providing for partial refund of the gasoline tax to purchasers of gasoline used in farm operations, does not impair the obligation of the contracts of the holders of State highway certificates of indebtedness. *State v. Query*, 207 S. C. 500, 37 S. E. (2d) 241 (1946).

Or changing time for getting auto license.—Statute changing time for procuring automobile license does not impair obligation of contract, since "license" is not a contract but is merely a privilege to do what otherwise would be unlawful. *Heslep v. State Highway Dept.*, 171 S. C. 186, 171 S. E. 913 (1933).

Or disposing of motor vehicle license fees.—Section 58-1443, providing for disposition of license fees for operation of motor vehicles for hire, does not violate this section through impairment of the obligation of contracts. *State v. Bates*, 198 S. C. 430, 18 S. E. (2d) 346 (1941).

Or providing that deed of feoffment cannot bar contingent remainders.—The act of 1883, providing that contingent remainders cannot be barred by deed of feoffment with livery of seizin, is neither unconstitutional nor retroactive when applied to a power vested before but not executed until after the enactment of the statute. Such act does not violate this section. *People's Loan, etc., Bank v. Garlington*, 54 S. C. 413, 32 S. E. 513 (1899).

Or writing off past-due bonds as State obligations.—Joint resolution requiring the State Treasurer to write off the books as State obligations certain past-due bonds is not a law impairing the obligation of contracts, but is a mere matter of bookkeeping. *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903).

Or law relating to collection and payment by banks of checks.—In *Witt v. Peoples State Bank*, 166 S. C. 1, 164 S. E. 306 (1932), § 8-181 et seq. of the Code, relating to collection and payment by banks of checks and other instruments for the payment of money, was held not to violate this section of the Constitution.

Or S. C. Unemployment Compensation Law.—The South Carolina Unemployment

Law (see § 68-1 et seq. of the Code) does not violate this section by impairing the obligation of contracts between employer and employees. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

Or tax on production and sale of electric power.—Sections 65-901 and 65-902, imposing tax on production and sale of electric power in addition to franchise and income taxes, impaired the obligation of no contract existing between the State and complainant power companies. *South Carolina Power Co. v. South Carolina Tax Comm.*, 52 F. (2d) 515 (1931), affirmed in 286 U. S. 525, 52 S. Ct. 494, 76 L. Ed. 1268 (1932).

But tax levy on exempted property does impair contract.—Where the Columbia Canal with its lands and appurtenances were exempted from all taxes, except those for State purposes, under a contract made by the State with the purchaser of such canal under act dated December 24, 1890, a levy and collection of county taxes on said property by a State officer is in violation of this section as an impairment of the obligation of a contract. *Columbia Water Power Co. v. Campbell*, 75 S. C. 34, 54 S. E. 833 (1906).

As may use of unexpended balances from bond issue.—An act authorizing road commission to use all unexpended balances realized from bond issue for hard-surface roads impairs obligation of contract with bondholders. *Martin v. Saye*, 147 S. C. 433, 145 S. E. 186 (1928).

Or relieving judgment debtors from deficiency judgments.—An act approved May 2, 1933 (38 St. at Large, p. 350), entitled "An act to provide for the relief of real estate mortgagors and other judgment debtors from deficiency judgments in foreclosure to the extent of the true value of the mortgaged property, and to prescribe the procedure thereon," is unconstitutional, null, and void as impairing the obligation of a mortgage contract which was executed prior to the enactment of the statute. *Federal Land Bank v. Garrison*, 185 S. C. 255, 193 S. E. 308 (1937).

Or depriving sheriff of fees.—Act No. 131 of the acts of 1933, enacted prior to the amendment of S. C. Const., Art. 3, § 34, subdiv. 9, devolving all duties, powers, and privileges exercised by the sheriff with regard to collection of delinquent taxes, levying upon property of delinquent taxpayers, and execution of deeds in case of sale upon the chief of rural police of said county, and providing also that the sheriff of Sumter County shall keep the books and records pertaining to tax collections, is unconstitutional insofar as it deprives the sheriff of

Sumter County of fees and commissions on delinquent taxes after its effective date. *Hurst v. Sumter County*, 189 S. C. 376, 1 S. E. (2d) 238 (1939).

Or invalidly regulating hours of workers.—Act No. 943 of the 1938 acts, which act regulates the hours of workers, is invalid as it violates this section in that it is not a proper exercise of the public power of the State, and the classifications therein are arbitrary and without reasonable basis. *Gasque v. Nates*, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

II. EX POST FACTO LAWS.

An ex post facto law is one that has retro-active effect.—*McCoy v. State Highway Dept.*, 169 S. C. 436, 169 S. E. 174 (1933).

Death penalty may be changed.—An act changing the manner of inflicting the death penalty from hanging to electrocution is not

disadvantageous to one committing a crime for which the penalty is death prior to the enactment of the law. Therefore, such law is not ex post facto as applied to him. *State v. Vaughn*, 95 S. C. 455, 79 S. E. 312 (1913), affirmed in 238 U. S. 612, 35 S. Ct. 940, 59 L. Ed. 1489 (1915).

III. FORFEITURE OF ESTATES.

Execution of insured does not bar action on incontestable policy.—The legal execution of an insured for a crime committed by him is no defense to an action which had been in force more than two years on a life policy, fixed by an incontestability clause providing that it shall be incontestable after two years, in view of this section which provides that no conviction shall work a forfeiture. *Weeks v. New York Life Ins. Co.*, 128 S. C. 223, 122 S. E. 586 (1924).

§ 9. Suffrage.

The right of suffrage, as regulated in this Constitution, shall be protected by law regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct.

Cross reference.—As to qualifications for suffrage, see S. C. Const., Art. 2, § 4.

School trustee election law held invalid under section.—A statute imposing a mandatory duty on the county board of education for Chesterfield County immediately to appoint and commission school trustees elected at an election conducted according

to regulations applicable to primary elections was held invalid as dispensing with the constitutional requirements for suffrage and substituting therefor the regulations applicable to primary elections. *State v. Huntley*, 167 S. C. 476, 166 S. E. 637 (1932).

§ 10. Elections free and open.

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.

See Const. 1868, Art. I, § 31.

Cross references.—As to qualifications for suffrage, see S. C. Const., Art. 2, § 4. As to protection of right of suffrage, see S. C. Const., Art. 1, § 9.

Qualifications for eligibility to office.—All officers, constitutional and statutory, whether elected or appointed, must be qualified electors. The legislature may not add other conditions for eligibility to those specified in the Constitution for election or appointment to constitutional offices, that is, those offices created by the Constitution. As to offices established only by legislative acts, the General Assembly may prescribe other and additional qualifications which are reasonable in their requirements. *McLure v. McElroy*, 211 S. E. 106, 44 S. E. (2d) 101 (1947).

Question submitted by election petition is not election.—The question of annexation was submitted to the areas to be annexed by an election petition instead of a regular election by ballot. This did not violate this section as it was not an election within the contemplation of this section. *Sanders v. Greater Greenville Sewer Dist.*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

School trustee election law held invalid under section.—See note to Art. I, § 9.

Bond issue election provisions in conflict with section.—The provisions of Act No. 102, 38 St. at Large, p. 114, which provide that one offering to vote at an election on the question of issuing bonds in a school district election in Greenville County must return for taxation real and personal prop-

erty therein, in addition to showing a certificate of registration and a tax receipt, are in direct conflict with this section. *Cothran v. West Dunklin Public School Dist.*, 189 S. C. 85, 200 S. E. 95 (1938).

For additional related case, see *Ex parte Lumsden*, 41 S. C. 553, 19 S. E. 749 (1894).

Stated in *Wiley v. Sinkler*, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84 (1900).

Cited in *Martin v. School Dist.*, 57 S. C. 125, 35 S. E. 517 (1900). *Fooshe v. McDonald*, 82 S. C. 22, 63 S. E. 3 (1908); *Rivers v. McIntire*, 160 S. C. 462, 158 S. E. 816 (1931).

§ 11. Property qualifications; term of office; dueling.

No property qualification, unless prescribed in this Constitution, shall be necessary for an election to or the holding of any office. No person shall be elected or appointed to office in this State for life or during good behavior, but the terms of all officers shall be for some specified period, except Notaries Public and officers in the militia. After the adoption of this Constitution any person who shall fight a duel or send or accept a challenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of holding any office of honor or trust in this State, and shall be otherwise punished as the law shall prescribe.

See Const. 1868, Art. I, § 32.

- I. General Consideration.
- II. Application of Section.

I. GENERAL CONSIDERATION.

Purpose of section.—There is no inconsistency in this section and S. C. Const., Art. 5, § 20. Prior to the adoption of the S. C. Constitution of 1895, offices in this State might be held during good behavior. The purpose of this section was to change this rule and make the term a limited one in order to make office holders more amenable to the elective or appointive power. *State v. Bowden*, 92 S. C. 393, 75 S. E. 866 (1912).

Definition of "office."—The term "office" as used in this section means a public station permanent in character, and the term "officer" means a person holding such a station. *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

Holding office for "some specified period."—It would be most unreasonable to impute to the constitutional convention a purpose to give to "some specified period" a meaning so narrow as to prohibit any legislative provision against the inconvenience arising from vacancies in public office, which would occur if the incumbent could not hold office until appointment or election and qualification of his successor. The convention could not have meant to prohibit itself and the General Assembly from doing that which it actually did later in the Constitution in providing that the Governor and the justices of the Supreme Court should hold their offices for the number of years mentioned until their successors should be elected and qualified, and that magistrates should hold

their offices for two years and until their successors should be appointed, confirmed, and qualified. *State v. Bowden*, 92 S. C. 393, 75 S. E. 866 (1912).

Term of office may be inferred from nature of office.—This section does not require that the term of every officer shall be fixed by direct legislative enactment. The specified period may be inferred from the nature of the office and the duties of the officer. For example, when an inferior office is created, the tenure may be implied to be the same as that of the superior office to which the inferior is an adjunct. Such an implication is especially strong when the inferior officer is charged with minor matters, with the general supervision and responsibility devolving on the superior officer. *Sanders v. Belue*, 78 S. C. 171, 58 S. E. 762 (1907).

Quoted in *State v. Wannamaker*, 213 S. C. 1, 48 S. E. (2d) 601 (1948).

Cited in *Ex parte Alverson*, 123 S. C. 539, 117 S. E. 316 (1923); *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927); *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

II. APPLICATION OF SECTION.

Section does not apply to certain public duties.—The appointment of certain individuals to perform duties in connection with the construction of a single specified public improvement (the "Coastal Highway Act", 1926 Acts, p. 1492) is not within this section. *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

Officers may not perpetuate themselves in office.—Members of a board of trustees

of a hospital are not permitted under this section to perpetuate themselves in office through indefinite reappointment of such members upon the expiration of their respective terms. *Bradley v. Greenville*, 212 S. C. 389, 46 S. E. (2d) 29 (1948).

Holding over without qualification until qualification of successor.—A county treasurer, who had taken oath of office, had given bond, and had served for several terms, was nominated for another term but did not receive the commission from the Governor, nor take oath nor give bond. Nevertheless, while continuing to act until a successor was appointed and qualified, he was county treasurer during such time, even though he had not given the bond and taken the oath. *State v. Mason*, 118 S. C. 171, 110 S. E. 128 (1921).

Valid terms of office of highway commissioners.—An act of the General Assembly authorizing a county bond issue and creating a highway commission does not violate this section on the ground that the tenure of office holders shall be four years, or until their successors are appointed and qualify, or until the provisions of the act are completely carried out. *Graham v. Ervin*, 114 S. C. 419, 103 S. E. 750 (1920).

The provision of 29 St. at Large, p. 493, that the commission thereby created to have charge of the improvement of highways in Richland County shall serve for a term of three years or until the provisions of that act are completely carried out does not violate this section, since the term is for the specified period of three years and the further provision merely restricts the term to the completion of the work, if completed within that time, and does not

extend the term beyond such period without reappointment. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Poorhouse act not complying with section is void.—An act providing for committee for poorhouse, which does not specify terms of office, is void. *State v. Lemon*, 148 S. C. 98, 145 S. E. 704 (1928).

Duration of term of subordinate officer of poorhouse.—The county board of commissioners are by law made responsible for the general supervision of the poorhouse and farm of the county. It was never intended that the subordinate officer appointed by them for superintendence of the institution should have a longer term than those by whom he was appointed. *Sanders v. Belue*, 78 S. C. 171, 58 S. E. 762 (1907).

New charter not limiting police chief's term of office.—In view of this section providing that the terms of all officers shall be for some definite period, the chief of police of a city which had adopted the commission form of government by a charter not limiting the term of such officer cannot enjoin the installation of a successor on the ground that the new charter repealed the former provision limiting the term of office to two years, since either that maximum was continued in force or the office was destroyed. In either event, the plaintiff is not concerned with what became of the office. *Richardson v. Blalock*, 118 S. C. 438, 110 S. E. 678 (1922).

Refusal of surety to bond officer succeeding himself.—As to surety company refusing to issue another bond on an officer succeeding himself for another term, see *State v. Mason*, 126 S. C. 426, 120 S. E. 367 (1923).

§ 12. Residence.

Temporary absence from the State shall not forfeit a residence once obtained.

See Const. 1868, Art. I. § 35.

§ 13. Suspension of laws.

The power of suspending the laws or the execution of the laws shall only be exercised by the General Assembly or by its authority in particular cases expressly provided for by it.

See Const. 1868, Art. I, § 24.

Cross reference.—As to authority of the Governor to call out the militia, see § 44-114 and 44-115.

§ 14. Departments separate.

In the government of this State the legislative, executive and judicial powers of the Government shall be forever separate and distinct from each other, and

no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

See Const. 1868, Art. I, § 26.

- I. General Consideration.
- II. Legislative Powers.
- III. Executive Powers.
- IV. Judicial Powers.

1. GENERAL CONSIDERATION.

Section applies to State government.—This section of the Constitution refers to the government of the State and to State officers. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

But not to government of municipal corporations.—*Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

The three departments under this section are co-ordinate and independent. Each is supreme as to matters within its own sphere of action, subject alone to the limitations, checks, and balances provided in the Constitution. *State v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

Section vested existing judicial power in courts.—This section assumed the existence of an organized society, and when it vested the judicial power in the courts, it had reference to the judicial power then existing and such as the people then understood to be vested in and exercised by the courts. *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 S. Ct. 293, 60 L. Ed. 658 (1916).

Cited in *State v. Parler*, 52 S. C. 207, 29 S. E. 651 (1898); *State v. Columbia Ry., etc., Co.*, 129 S. C. 455, 124 S. E. 758 (1924); *State v. Mooror*, 152 S. C. 455, 150 S. E. 269 (1929); *State v. Stauss*, 114 S. C. 445, 103 S. E. 769 (1920); *State v. Pridmore*, 163 S. C. 97, 161 S. E. 340 (1931).

II. LEGISLATIVE POWERS.

Test of delegation of legislative power.—The prohibition of this constitutional section that power conferred upon the legislature to make law cannot be delegated by that body to any other body or authority is tested by determining whether the act is complete in itself when it leaves the legislature. *DeLoach v. Scheper*, 188 S. C. 21, 198 S. E. 409 (1938).

Legislature may engage in nonlegislative functions.—The legislature may properly engage in the discharge of nonlegislative functions only so far as is reasonably incidental to full and effective exercise of legislative powers. *Spartanburg County v. Miller*, 135 S. C. 348, 132 S. E. 673 (1924); *Ruff v. Boulware*, 133 S. C. 420, 131 S. E. 29 (1925).

And investigate any subject by committee.—The legislature has the power to investigate any subject, which power may be exercised by a committee. Where there is a legitimate use that the legislature can make of the information sought, an ulterior purpose in the investigation cannot be imputed, nor can an improper use of the information, when secured, be presumed. *Robertson v. Peeples*, 120 S. C. 176, 115 S. E. 300 (1919).

But cannot confer power to pass final judgment.—An act conferring powers on the dispensary commission is invalid in so far as it confers on the commission power to pass final judgment on the claim of the State against a claimant for materials furnished a dispensary. *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 S. Ct. 293, 60 L. Ed. 658 (1916).

Legislative delegation may not execute laws passed by legislature.—An act which authorized Greenville County to issue not exceeding \$350,000.00 in bonds and to borrow not exceeding \$350,000.00, and which vested full discretion as to the amount of bonds to be issued, the amount of money to be borrowed, and the roads to be constructed or improved with the funds in the county legislative delegation was declared to run counter to this section of the Constitution, since the county legislative delegation, which belongs to the legislative department of government, cannot be appointed as an executive body to carry out and carry into effect laws passed by the legislature. *Bramlette v. Stringer*, 186 S. C. 134, 195 S. E. 257 (1938), overruling *Ruff v. Boulware*, 133 S. C. 420, 131 S. E. 29 (1925), insofar as it conflicts therewith.

Statutes creating Public Service Authority are constitutional.—Sections 59-1 to 59-84 creating the South Carolina Public Service Authority, which was authorized to construct hydroelectric and navigation project, to finance construction of project by issuance of bonds, and to regulate rates on electricity produced at such project is not an unconstitutional delegation of legislative power. *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1937).

As is county housing authority statute.—Section 36-181 of the Code, providing for the possible creation in each county of the State of a county housing authority, is for a public purpose and does not constitute an

unlawful attempt to delegate legislative powers in violation of this section of the Constitution. *Benjamin v. Housing Authority of Darlington County*, 198 S. C. 79, 15 S. E. (2d) 737 (1941).

And State highway condemnation statutes.—The condemnation procedure set out in §§ 33-122, 33-125, 33-127 and 33-132 of the Code does not violate this section of the Constitution by allegedly bestowing upon the State Highway Commission both administrative and judicial functions in the condemnation of private property for State purposes. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

And act regulating size and weight of trucks.—In *State v. Nutt Co.*, 180 S. C. 19, 185 S. E. 25 (1935), an act regulating the size and weight of trucks was held not to violate this section of the Constitution.

And act authorizing road improvements.—Act No. 1256, 1938 Acts [1938 (40) 2730], authorizing the board of county commissioners of Richland County to borrow not exceeding \$360,000.00 for the purpose of improving certain roads in the county of Richland and to provide for the payment thereof, is not violative of this section because it specifies particular roads to be surface-treated with money authorized to be borrowed. *Reese v. Hinnant*, 187 S. C. 474, 198 S. E. 403 (1938).

And statute permitting State agency to make regulations.—Former section of the Code (1942 Code § 5899, repealed by 1949 Acts [1949 (46) 342]), which gave to the State Highway Department the power to prescribe departmental rules and regulations, did not violate this section of the Constitution. *Stoval v. Sawyer*, 181 S. C. 379, 187 S. E. 821 (1936).

And statutes regulating hairdressers and cosmetologists.—Sections 56-451 to 56-482, relating to regulations of hairdressers and cosmetologists, do not violate this section of the Constitution prior to the 1948 amendment to such Code sections. *State v. Ross*, 185 S. C. 472, 194 S. E. 439 (1937).

And statute providing for bond issue for State institutions.—A statute providing for issuance of bonds for specified State institutions, which included fixed plan of administration and which was to become operative upon ascertainment of particular facts, was held not invalid as a delegation of legislative authority because of a provision conferring authority upon Governor and State Treasurer to select one of two specified sources of revenue for payment of bonds, since nothing was left to discretion of Governor and State Treasurer as

to what should constitute form or substance of statute. *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935).

But act giving excessive power to legislative delegation is void.—That part of an act (§ 5 of Act No. 502, 1944 Acts) which confers upon the legislative delegation the authority to fix the amount that may be borrowed by the county board of education for the purpose of repairing, enlarging, constructing, and equipping school buildings is invalid under the authority of *Branlette v. Stringer*, 186 S. C. 134, 195 S. E. 257 (1938), in that it violates this section of the Constitution. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

That portion of an act (§ 4, Act No. 502, 1944 Acts) which provided that the salary of the clerk of the county board of education shall be approved by the legislative delegation was held to violate this section of the Constitution. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

And legislators may not serve on auditorium district board.—The members of the legislature from a county may not serve as trustees on a board for an auditorium district. They were elected for the purpose of making laws—not administering them. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

III. EXECUTIVE POWERS.

Judicial department cannot control executive officer.—An executive officer cannot be restrained, coerced, or controlled by the judicial department. *State v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

Although official ministerial duty may be compelled.—As applied to members of the executive department other than the chief executive, jurisdiction is generally asserted by the courts to compel the performance of an official duty imposed by law which is plainly ministerial and involves no discretion. *State v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

Mandamus may not compel Governor to perform executive duty.—The weight of authority and reason are in favor of the view that mandamus should not lie against the Governor to compel performance of an executive duty, whether ministerial or not, since there may be no good ground for a distinction between an executive duty which is ministerial and an executive duty which is not ministerial. *State v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

But certiorari lies if Governor invested with judicial function.—*State v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

Appointing special judge is not essential executive function.—The appointment of a special judge to preside over the special or regular court is not essentially an executive function within the classification of legislative, executive, and judicial powers under this section, but may be regulated by statute. *State v. Davis*, 88 S. C. 204, 70 S. E. 417 (1911).

Nor is supervision of public work.—The supervision of public work is not an inherent function of the executive department, and the legislature has the power to have the work done by and through such agencies as it sees fit. *Little v. Willimon*, 103 S. C. 50, 87 S. E. 435 (1915).

Governor may be deprived of power to veto bond issue.—Depriving the Governor of his power to veto a bond issue plan without his veto of the whole county supply act is not an invasion of the powers of the executive department by the legislative, since the constitutional authority of the executive to veto is in the nature of a legislative power. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

Notification of dismissal of appeal from death sentence.—An act requiring Supreme Court clerk, an executive officer, to notify Penitentiary superintendent of dismissal of appeal suspending execution of death sentence is not unconstitutional as imposing judicial duties upon an executive officer. *Ex parte Howell*, 168 S. C. 197, 167 S. E. 230 (1932).

IV. JUDICIAL POWERS.

Legislative duty may not be compelled by mandamus.—The court will not attempt to compel the legislature by mandamus to perform a legislative duty or function. *Foster v. Taylor*, 210 S. C. 324, 42 S. E. (2d) 531 (1947).

Legislature decides question as to purpose of act.—Under the division of the powers provided in the State Constitution, the question of whether an act is for a public purpose is primarily one for the legislature, and the court will not interfere with the legislative finding unless the determination of that body is clearly wrong. *Mc-*

Nulty v. Owens, 188 S. C. 377, 199 S. E. 425 (1938).

But courts decide election results.—The hearing and deciding a question by the legislature as to the result of an election, to decide whether a new county should be established, is in exercise of judicial power. As such it is unconstitutional under this section. *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898).

And determine custody of children.—The determination of the right to custody of minor children and their illegal restraint is a judicial question. Thus, a statute authorizing the father to convey the custody of the children during minority against the mother's wishes, without permitting any judicial investigation of the rights of the mother and children as to their custody, would violate this section. *Ex parte Tillman*, 84 S. C. 552, 66 S. E. 1049 (1910).

Board of education may hear local controversy.—A statute granting authority to the county board of education to hear matters of local controversy relating to the construction and administration of school laws and allowing appeal to the State Board of Education does not contravene this provision. *Willow Consol. High School Dist. v. Union School Dist.* 216 S. C. 445, 58 S. E. (2d) 729 (1950).

Enforcing judgment by mandamus does not usurp legislative right.—The enforcement of a judgment of the court by means of mandamus, resulting in payment from unappropriated surplus funds of a county which were provided pro tanto by the services of a county officer, is not the usurpation of a legislative right by the court, but is the exercise of the court's own function. *Foster v. Taylor*, 210 S. C. 324, 42 S. E. (2d) 531 (1947).

Pleading statute not violative of section.—Construing statute pertaining to "amendments of course" as not permitting amendment of pleading, previously amended as of course, does not violate constitutional provision prohibiting judiciary from discharging duties of legislature. *First Carolinas Joint Stock Land Bank v. Stuckey*, 170 S. C. 86, 169 S. E. 843 (1933).

§ 15. Courts; remedy.

All Courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.

See Const. 1868, Art. I, § 15.

Section secures to residents access to State courts.—It is very manifest that the object of this section was not to so extend the jurisdiction of the courts of this State as to throw open their doors to any per-

son from any quarter of the globe to demand redress for injuries received anywhere, but simply to secure to the inhabitants of the State for whom the Constitution was made access to the courts for redress

of any wrongs which they may have received. *Central R., etc., Co. v. Georgia Const., etc., Co.*, 32 S. C. 319, 11 S. E. 192 (1890).

Public courts include coroner's inquest.—A coroner's inquest is within the spirit of this section, requiring all courts to be public. *State v. Griffin*, 98 S. C. 105, 82 S. E. 254 (1914).

Scope of term "wrongs".—The word "wrongs" is here used in its broadest legal sense, embracing every injury to or impairment of legal rights of person or property. *Davis v. Whitlock*, 90 S. C. 233, 73 S. E. 171 (1911).

Prevention of marriage may be legal wrong.—One sustains a legal wrong when his rights of person and property are impaired, and when he is restrained from marrying, living in doubt as to the most solemn and important legal obligations and duties affecting both his person and his property. *Davis v. Whitlock*, 90 S. C. 233, 73 S. E. 171 (1911).

Lax observance of appeal regulations denies speedy remedy.—A lax observance of the very reasonable regulations prescribed by statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in courts, thus working infringement of the

constitutional guaranty under this section. *Rylee v. Marett*, 121 S. C. 366, 113 S. E. 483 (1922).

As does amending pleading previously amended as of course.—To permit amendment of a pleading which was previously amended as of course would violate the constitutional provision that every person shall have speedy remedy in court for wrongs sustained. *First Carolinas Joint Stock Land Bank v. Stuckey*, 170 S. C. 86, 169 S. E. 843 (1933).

But emergency law giving Governor control of banks is valid.—An emergency statute temporarily vesting in the Governor control of banks, and forbidding legal proceedings against banks without the Governor's approval, was held not unconstitutional as depriving depositors of property without due process or as denying to them the right of speedy remedy in court for wrong sustained. *State v. Gibbes*, 171 S. C. 209, 172 S. E. 130 (1933), affirmed in 290 U. S. 326, 54 S. Ct. 140, 78 L. Ed 342 (1933).

Quoted in *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

Cited in *Gilmer v. Hunnicutt*, 57 S. C. 166, 35 S. E. 521 (1900); *Sirrine v. State*, 132 S. C. 241, 128 S. E. 172 (1925).

§ 16. Searches and seizures.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

See Const. 1868, Art. I, § 22.

- I. General Consideration.
- II. Application of Section.

I. GENERAL CONSIDERATION.

"Search" implies invasion and quest, and that implies some sort of force, actual or constructive, much or little. *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

Section is intended to protect person and property.—This section was adopted to save a citizen's person and his house from invasion by some sort of force, except when the invasion is had in the most guarded way. *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

And search warrants must be carefully issued.—This section imposes on officers the duty of issuing search warrants with careful discretion and executing them with reasonable caution and promptness. *Farmer v. Sellers*, 89 S. C. 492, 72 S. E. 224 (1911).

Necessity for search in order to secure warrant.—This section requires a warrant to seize only in those instances where the seizure is assisted by a necessary search. *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

This section does not prohibit seizure without warrant where there is no need of a search and where the contraband subject matter is fully disclosed and open to the eye and hand. *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

Warrant not supported by oath or affirmation is illegal.—A warrant under which a defendant was arrested, which was not supported either by oath or affirmation, was illegal, and the sheriff had no lawful authority to retain him in custody as such warrant was unconstitutional, null, and void. *State v. Higgins*, 51 S. C. 51, 28 S. E. 15 (1897).

Cited in *State v. Harley*, 107 S. C. 304, 92 S. E. 1034 (1917); *Robertson v. Peeples*, 120 S. C. 176, 115 S. E. 300 (1919); *Mayesville v. Clamp*, 149 S. C. 346, 147 S. E. 455 (1929); *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931).

II. APPLICATION OF SECTION.

Books of cotton buyers may be open to public inspection.—An act providing that books of cotton buyers shall be open to public inspection, is not unconstitutional as permitting unreasonable searches and seizures. *Parks v. Laurens Cotton Mills*, 75 S. C. 560, 56 S. E. 234 (1907).

And books of a State officer may be validly examined. *State v. Farnum*, 73 S. C. 165, 53 S. E. 83 (1905).

Seizure of whiskey without warrant in automobile.—Where police officers discover unconcealed whiskey in an automobile without making a search therefor and the whiskey is being unlawfully transported, a seizure of the whiskey without a warrant to seize, is not violative of this section. *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

Evidence obtained upon seeing illegal liquor sold is admissible.—Where an officer saw defendant sell liquor, no search warrant is necessary to make evidence obtained by a search of the premises admissible. *State v. Maes*, 127 S. C. 397, 120 S. E. 576 (1923).

As is liquor seized without warrant.—In a prosecution for unlawfully transporting intoxicating liquor, the fact that the arresting officer without a warrant seized certain liquor in defendant's possession did not prevent such liquor from being introduced in evidence. *State v. Kanellos*, 122 S. C. 351, 115 S. E. 636 (1923).

Since evidence illegally obtained is admissible.—Though evidence may have been illegally taken from possession of the party against whom it is offered or otherwise unlawfully obtained, such fact does not render it inadmissible. *State v. Prescott*, 125 S. C. 22, 117 S. E. 637 (1923).

One in act of committing misdemeanor may be arrested without warrant by a magistrate. *State v. Byrd*, 72 S. C. 104, 51 S. E. 542 (1905).

§ 17. Presentment of grand jury; not tried twice; private property.

No person shall be held to answer for any crime where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days, with or without hard labor, unless on a presentment or indictment of a grand jury of the County where the crime shall have been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall be compelled in any criminal case to be a witness against himself. Private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

See Const. 1868, Art. I, §§ 18, 23.

I. Private Property.

A. Scope of Private Property Provision.

B. "Taking" of Private Property.

C. Where Private Property Taken.

D. Where Private Property Not Taken.

II. Compelled To Be a Witness.

III. Former Jeopardy.

IV. Indictment.

Cross Reference.

As to privilege of defendant to testify, see § 26-405.

I. PRIVATE PROPERTY.

A. Scope of Private Property Provision.

This section permits property condemnation by State.—Within the provisions of this section of the Constitution, property may be condemned by the State or by any of its departments or agents. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

And was intended to maintain sanctity of private property.—*Ex parte Bacot*, 36 S. C. 125, 15 S. E. 204 (1892); *Leitzsey v. Columbia Water-Power Co.*, 47 S. C. 464, 25 S. E. 744 (1896).

It must be considered with S. C. Const., Art. 9, §§ 1, 2, and 20. *Boyd v. Winnsboro Granite Co.*, 66 S. C. 433, 45 S. E. 10 (1903).

The framers of the State Constitution certainly did not intend that this section should alone be considered in determining the right to take private property for private use. Otherwise, there would have been no necessity for inserting § 20, Art. 9. *Boyd v. Winnsboro Granite Co.*, 66 S. C. 433, 45 S. E. 10 (1903).

Private property provision of section is self-executing. *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931); *Sheriff v. Easley*, 178 S. C. 504, 183 S. E. 311 (1936); *Gowan v. Greenville County*, 193 S. C. 327, 8 S. E. (2d) 509 (1940).

It is for benefit and protection of property owners whose property is taken for public purposes. *Bradley v. Greenville*, 212 S. C. 389, 46 S. E. (2d) 291 (1948).

And does not need legislation for enforcement.—This constitutional provision is self-acting, and does not need for enforcement the aid of legislation to give the party injured the right to sue the agency of the State involved. *Chesterfield County v. State Highway Dept.*, 181 S. C. 323, 187 S. E. 548 (1936).

Since law action lies hereunder for compensation absent statute.—An action at law would lie to recover just compensation for private property taken for public use in advance of legislation providing therefor. *Baynham v. State Highland Dept.*, 181 S. C. 435, 187 S. E. 528 (1936).

This constitutional provision relating to taking private property is self-executing, and, the legislature having enacted no statute providing for the compensation guaranteed by this section, an action at law will lie to recover such compensation. *Milhous v. State Highway Dept.*, 194 S. C. 33, 8 S. E. (2d) 852 (1940).

A city cannot be sued in tort unless a statute expressly gives a right of action or unless the city takes property without just compensation. *Reeves v. Easley*, 167 S. C. 231, 166 S. E. 120 (1932).

A municipal corporation cannot be sued in tort in the absence of a statute authorizing such suit, but it must and can be sued under this section of the Constitution, which is self-executing, for compensation where real property of a landowner upon a natural stream is invaded so as effectually to destroy or impair its usefulness by reason of the use of land, lawfully acquired for public purposes by a municipality, in such a way as to affect neighboring real estate, although there has been no actual entry and no

artificial structure upon such neighboring real estate. *Oates v. Easley*, 182 S. C. 91, 188 S. E. 504 (1936).

The true meaning of this section is that before the owner of the property to be condemned is finally deprived of his property, proper provision shall have been made for his first being paid therefor. *Spartanburg v. Belk's Dept. Store*, 199 S. C. 458, 20 S. E. (2d) 157 (1942).

Extent of application of word "property".—The word "property" does not extend so far as to include services performed under a contract. *Harris v. Fulp*, 178 S. C. 332, 183 S. E. 158 (1935).

Meaning of "public use".—In *Boyd v. Winnsboro Granite Co.*, 66 S. C. 433, 45 S. E. 10 (1903), the phrase "public use" was construed to be, in effect, synonymous with "public benefit," "public utility," and "public advantage." *Gasque v. Conway*, 194 S. C. 15, 8 S. E. (2d) 871 (1940).

Meaning of "compensation".—The word "compensation" seems to have been used advisedly. It means the balancing of things against each other; the balancing of benefits against loss and damage. *Spartanburg v. Belk's Dept. Store*, 199 S. C. 458, 20 S. E. (2d) 157 (1942).

Compensation may be secured by deposit of money.—Condemnor need not actually pay compensation before entering on lands condemned for dam, provided compensation is secured by deposit of money. *Lexington Water Power Co. v. Wingard*, 150 S. C. 418, 148 S. E. 366 (1929).

And need not be paid before determination of "just compensation".—This section does not require, either in express terms or by implication, that the compensation to be made for taking private property for public use shall be actually paid in advance of the determination by proper authority of what is just compensation in the circumstances. *Spartanburg v. Belk's Dept. Store*, 199 S. C. 458, 20 S. E. (2d) 157 (1942).

Right to compensation may be waived.—The right to compensation for property taken for public use being personal to the owners of the property, they can waive this objection to the constitutionality of the act under which it was taken. *Goodale v. Sowell*, 62 S. C. 516, 40 S. E. 970 (1902). See also, *Brown v. Tharpe*, 74 S. C. 207, 54 S. E. 363 (1906).

"Just compensation" may be exclusive remedy.—The exclusive remedy provided by law for the taking by a governmental agency of one's property for public use, in the absence of a statute to the contrary, is the right to recover "just compensation" for

the same. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

But it does not include punitive damages.—"Just compensation" does not include punitive or exemplary damages. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

Difference between taking for public and quasi-public purpose.—The marked difference between the provisions of this section, which is applicable to municipal corporations, and those of Art. 9, § 20, which is applicable to private or quasi-public corporations, is significant as it clearly warrants the inference of an intention that a different rule with regard to the consideration of benefits as compensation must be applied in the case of taking for a quasi-public purpose from that which may be applied when the taking is for a purely public purpose. *Spartanburg v. Belk's Dept. Store*, 199 S. C. 458, 20 S. E. (2d) 157 (1942).

Taking land for railroad station is for public purpose.—Land condemned for union passenger station by corporation formed by statute is taken for a public use. *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905).

All loss is assessed in one proceeding.—In an eminent domain proceeding, all loss occurring by the "taking" should be assessed in one proceeding. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

Legislature may enact condemnation procedure.—Under the provisions of this section, it is left to the legislature to enact procedure by which private property may be condemned for public use, together with the means by which just compensation is to be made. *Spartanburg v. Belk's Dept. Store*, 199 S. C. 458, 20 S. E. (2d) 157 (1942).

And delegate condemnation right to city.—The right of the State to condemn a water works rests in eminent domain, and is vested in the State and limited in its exercise by this section. The legislature may delegate such right to a city. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Or to corporation.—Property shall not be taken for private use without the consent of the owner, except in cases where this power is conferred upon corporations by the General Assembly, and only then in the manner prescribed by Art. 9, § 20. *Wilson v. Alderman & Sons Co.*, 69 S. C. 176, 48

S. E. 81 (1904); *Boyd v. Winnsboro Granite Co.*, 66 S. C. 433, 45 S. E. 10 (1903).

Such as a power company.—The charter of a power company providing that it shall sell or furnish power to any person or corporation makes it a public corporation, and the legislature may empower it to condemn land of private persons for erection of a dam. *McMeekin v. Central, etc., Power Co.*, 80 S. C. 512, 61 S. E. 1020 (1908).

But legislature cannot fix limit of compensation.—Since the State Constitution has provided for just compensation for private property taken for public use, it is not in the power of the legislature to fix the limit of such compensation. *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931).

State may be sued for compensation without legislative act.—No act of the General Assembly is needed for suit against the State to recover just compensation for private property taken for public purpose. *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931).

Since State is not immune to such suit.—Immunity from suit does not extend to either the commonwealth or its political subdivisions where the act complained of constitutes taking of private property without just compensation. *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931).

State highway condemnation procedure is valid.—The condemnation procedure set out in §§ 33-122, 33-125, 33-127, and 33-132 of the Code does not violate this section of the Constitution by attempting to bestow upon the State Highway Commission both administrative and judicial functions in the condemnation of private property for State purposes. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Unnecessary allegations in suit against municipal corporation.—In an action against a municipal corporation under this section of the Constitution for taking private property for public use without compensation, it is not necessary to allege or offer proof that (1) such municipal corporation has negligently established, maintained, or operated that which has caused damages amounting to a taking or that (2) if there has been a taking without compensation and a denial of the right of compensation, it is immaterial if the taking was due to the negligence of such municipal corporation. *Sheriff v. Easley*, 178 S. C. 504, 183 S. E. 311 (1936); *Baynham v. State Highway Dept.*, 181 S. C. 435, 187

S. E. 528 (1936); *Werts v. Greenwood County*, 205 S. C. 258, 31 S. E. (2d) 451 (1944); *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

This rule applies, not only in actions against municipal corporations, but in actions against all political subdivisions of the State, including the State highway department. *Baynham v. State Highway Dept.*, 181 S. C. 435, 187 S. E. 528 (1936).

Acquiring right of way.—As to acquirement of right of way by railway company, see *Tompkins v. Augusta, etc., R. Co.*, 37 S. C. 382, 16 S. E. 149 (1892).

Easement.—As to question of easement, see *Brasington v. Williams*, 143 S. C. 223, 141 S. E. 375 (1927).

Restoration of train service.—As to requirement of railway company to restore certain trains, see *Blease v. Charleston, etc., R. Co.*, 146 S. C. 496, 144 S. E. 233 (1928).

As to police power pertaining to lots in city, see *City Council v. Werner*, 38 S. C. 488, 17 S. E. 33 (1893).

For additional related cases, see *McCandless v. Richmond & D. R. Co.*, 38 S. C. 103, 16 S. E. 429 (1892); *Mobile Ins. Co. v. Columbia & G. R. Co.*, 41 S. C. 408, 19 S. E. 858 (1894).

Applied in *Faust v. Richland County*, 117 S. C. 251, 109 S. E. 151 (1921); *Cook v. State Highway Dept.*, 162 S. C. 242, 160 S. E. 591 (1931); *Howell v. State Highway Dept.*, 167 S. C. 217, 166 S. E. 129 (1932).

Quoted in *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898); *State v. Gowan*, 178 S. C. 78, 182 S. E. 159 (1935).

Stated in *Standard Oil Co. v. Spartanburg*, 66 S. C. 37, 44 S. E. 377 (1903); *Matheny v. Aiken*, 68 S. C. 163, 47 S. E. 56 (1904); *State v. Johnson*, 70 S. C. 381, 50 S. E. 8 (1905); *Hopkins v. Clemson Agricultural College*, 77 S. C. 12, 57 S. E. 551 (1907); *State v. Hilton*, 87 S. C. 434, 69 S. E. 1077 (1910); *Webber v. Jonesville*, 94 S. C. 189, 77 S. E. 857 (1913); *May v. Thomas*, 94 S. C. 158, 78 S. E. 85 (1913); *South Carolina Western Ry. v. Ellen*, 95 S. C. 68, 78 S. E. 963 (1913); *Spartanburg v. Cudd*, 132 S. C. 264, 128 S. E. 360 (1925); *State v. Brody*, 152 S. C. 302, 149 S. E. 926 (1929).

Cited in *Martin v. School Dist.*, 57 S. C. 125, 35 S. E. 517 (1900); *South Carolina & G. R. Co. v. American Tel. & Tel. Co.*, 65 S. C. 459, 43 S. E. 970 (1903); *Riley v. Charleston Union Station Co.*, 67 S. C. 84, 45 S. E. 149 (1903); *Parks v. Laurens Cotton Mills*, 75 S. C. 560, 56 S. E. 234 (1907); *Drennan v. Southern Ry.*, 91 S. C. 507, 75 S. E. 45 (1912); *McDaniel v. Greenville-*

Carolina Power Co., 95 S. C. 268, 78 S. E. 980 (1913); *Powell v. Spartanburg County*, 136 S. C. 371, 134 S. E. 367 (1926); *Carolina & N. & W. R. Co. v. Alexander*, 155 S. C. 91, 151 S. E. 893 (1929); *State v. Hughes*, 56 S. C. 540, 35 S. E. 214 (1900); *State v. Harley*, 107 S. C. 304, 92 S. E. 1034 (1917); *State v. Maes*, 127 S. C. 397, 120 S. E. 576 (1923); *Keenan v. Broad River Powder Co.*, 163 S. C. 133, 161 S. E. 330 (1931); *Thomas v. Atlantic Coast Line Ry. Co.*, 168 S. C. 185, 167 S. E. 239 (1933); *South Carolina State Highway Dep't. v. Bobotes*, 180 S. C. 183, 185 S. E. 165 (1936); *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948); *Duke Power Co. v. Rutland*, 60 F. (2d) 194 (1932).



B. "Taking" of Private Property.

"Taking" involves actual interference with property rights.—A "taking" of property is a taking where the act involves actual interference with or disturbance of property rights and results in injuries which are not merely consequential or incidental. *Gasque v. Conway*, 194 S. C. 15, 8 S. E. (2d) 871 (1940).

Either by direct physical injury to property.—The word "taken" in this section is not limited in its meaning and application to cases in which there is an actual physical seizure and holding of property. It is broad enough to include cases in which there is such physical injury to property as results in destruction or substantial impairment of its usefulness. *White v. Southern R. Co.*, 142 S. C. 284, 140 S. E. 560 (1927).

Or without disturbing title or possession thereto.—A man's property may be taken, within the meaning of this provision, although his title and possession remain undisturbed. To deprive him of the ordinary beneficial use and enjoyment of his property is, in law, equivalent to the taking of it, and is as much a "taking" as though the property itself were actually appropriated. *Gasque v. Conway*, 194 S. C. 15, 8 S. E. (2d) 871 (1940).

There may be a taking of property in the constitutional sense, although there has been no actual entry within its bounds and no artificial structure has been erected upon it. When a public agency acting under authority of statute uses land which it has lawfully acquired for public purposes in such a way that neighboring real estate, belonging to a private owner, is actually invaded by superinduced additions of water, earth, sand, or other material so as to effectually destroy or impair its usefulness,

there is a taking within the meaning of the Constitution. *Baynham v. State Highway Dept.*, 181 S. C. 435, 187 S. E. 528 (1936); *Oates v. Easley*, 182 S. C. 91, 188 S. E. 504 (1936); *Milhous v. State Highway Dept.*, 194 S. C. 33, 8 S. E. (2d) 852 (1940).

Permanent injury constitutes single cause of action.—In an action for taking of property for public use without just compensation, an allegation that the action was brought for damages suffered by the plaintiff up to the date of the summons and is not intended to include any future damages to plaintiff's land which might be done hereafter by the defendant should be stricken out as irrelevant, because if the injury complained of is of a permanent character, then it follows that the plaintiff has a single cause of action which cannot be split. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

Statute may not be defense for nonpublic injury.—If a noxious act results in an injury peculiar to plaintiff or some special inconvenience or discomfort not experienced by the public at large, defendant cannot invoke the protection of any statute purporting to authorize it in view of the constitutional provision forbidding taking private property for public use without just compensation. *Belton v. Wateree Power Co.*, 123 S. C. 291, 115 S. E. 587 (1923).

Damages.—Owner of land taken by county for highway can recover as damages actual value of land taken only as reduced by special benefits, since "compensation" in this section means balancing benefits against loss and damage. *Wilson v. Greenville County*, 110 S. C. 321, 96 S. E. 301 (1918).

A landowner is not entitled to recover damages because of the vacation of a street unless he has sustained an injury different in kind and not merely in degree from that suffered by the public at large. If it appears that there is a special injury, the owner may recover damages, notwithstanding his property does not abut on the part of the street vacated, because this amounts to a "taking" within the meaning of this constitutional provision. *Rock Hill v. Cothran*, 209 S. C. 357, 40 S. E. (2d) 239 (1946).

Interest on award.—Where a considerable time elapsed between an award in condemnation proceedings and the taking of the property by the condemnor, the property owner was entitled to interest on the award under this section and S. C. Const.,

Art. 9, § 20. *Haig v. Wateree Power Co.*, 119 S. C. 319, 112 S. E. 55 (1922).

Railroad property is private property.—Though a railroad corporation is a quasi public corporation, the property of the railroad is private property and cannot be taken for private use. *Mays v. Seaboard, etc., Ry.*, 75 S. C. 455, 56 S. E. 30 (1906).

And section protects interests of remainderman in right of way obtained by railroad. *Cureton v. South-Bound R. Co.*, 59 S. C. 371, 37 S. E. 914 (1901).

C. Where Private Property Taken.

Act authorizing location of private way.—An act authorizing the location of a private way to the highway from the land of one surrounded on all sides by private land, without any such right of way, violates this section. *Beaudrot v. Murphy*, 53 S. C. 118, 30 S. E. 825 (1898).

Changing grade of highway.—Where change of grade in highway is made by or for benefit of railroad, abutting owners are entitled to compensation for resulting injuries. The fact that the change is made with consent of the municipality or the State does not relieve railroad from liability for injuries arising therefrom. *White v. Southern Ry. Co.*, 142 S. C. 284, 140 S. E. 560 (1927).

Closing portion of a city street constituted a "taking" of abutting owners' property within the meaning of this section, and they are not barred from their remedy at common law. *Cothran v. Rock Hill*, 211 S. C. 17, 43 S. E. (2d) 615 (1947). See also *Rock Hill v. Cothran*, 209 S. C. 357, 40 S. E. (2d) 239 (1946).

Construction of private telephone line.—Use of street for construction of a private telephone line by other than a city for its own purposes and that of its inhabitants is not a proper street use and hence entitles property owner to compensation for any injury to his property. *Benton v. Yarrowborough*, 128 S. C. 481, 123 S. E. 204 (1924).

Drainage laws.—The drainage laws do not permit taking of property for private use without consent of the owner, nor for public use without compensation. *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916).

Erection of stock law fence.—An act providing that the residents of a section of a county exempted from the general stock law must build a fence is unconstitutional because (1) it is for a private purpose, and (2) it takes the property of those upon whose land the fence is required to be built without compensation and without their

consent. *Goodale v. Sowell*, 62 S. C. 516, 40 S. E. 970 (1902).

Flooding and injuring property by negligent impounding of natural water course is "taking" within constitutional provision requiring just compensation. *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931); *Chick Springs Water Co. v. State Highway Dept.*, 178 S. C. 415, 183 S. E. 27 (1935); *Baynham v. State Highway Dept.*, 181 S. C. 435, 187 S. E. 528 (1936).

Impairment of hunting rights.—The impairment of the right of hunting, fowling, and fishing upon the plaintiff's land is an element which might affect the matter of just compensation for the alleged taking of property. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

Obstruction of water in drainage system.—A property owner is entitled under this constitutional provision to compensation for the damaging or taking of his property resulting from the obstruction by the State of surface waters in a drainage system, although an individual defendant may not be liable for damages under the same circumstances. This because the Constitution provides that private property shall not be taken for public use without compensation, without any qualification as to the method or means of such taking. *Milhous v. State Highway Dept.*, 194 S. C. 33, 8 S. E. (2d) 852 (1940).

Removing fence not subject to easement.—An ordinance compelling removal of a fence not subject to public easement was illegal as a taking of property without just compensation. *Riley v. Greenwood*, 72 S. C. 90, 51 S. E. 532 (1905).

Requiring railroads to build industrial sidetracks.—An act providing that railroad companies shall build industrial sidetracks to connect industrial enterprises with their main lines is void as authorizing taking of private property for a private use. *Mays v. Seaboard, etc., Ry.*, 75 S. C. 455, 56 S. E. 30 (1905).

Requiring telephone exchanges to be maintained.—A joint resolution requiring a named telephone company to construct and maintain telephone exchanges at two designated towns, which exchanges were not required to be maintained by any provision of its charter or franchise or by any contract, takes property of the corporation without just compensation. *Southern Bell Tel. & Tel. etc., Co. v. Calhoun*, 287 F. 381 (1923).

Salt water infiltration of property.—Where complaint alleged that defendant,

the South Carolina Public Service Authority, constructed a dam above plaintiff's property causing salt water to infiltrate into the streams and canals that ran through its property, thereby causing damage to the property and decreasing its value, the complaint stated a cause of action for taking property without just compensation. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

D. Where Private Property Not Taken.

Changing grade of a street after it has been once established is not "a taking" of property within the meaning of this section. *Garraux v. City Council*, 53 S. C. 575, 31 S. E. 597 (1898). See also, *Mauldin v. City Council*, 42 S. C. 293, 20 S. E. 842 (1895); *Columbia v. Melton*, 81 S. C. 356, 62 S. E. 245, 399 (1908); *Kendall v. City Council*, 74 S. C. 539, 54 S. E. 777 (1906).

A change in the grade of a street which diminishes the value of adjacent property is not a "taking" of property within the meaning of this provision. *Bland v. City Council*, 203 S. C. 392, 27 S. E. (2d) 498 (1943).

Diverting public watercourses.—The waters of the ocean and its bays, and of public watercourses and lakes so far as they lie within the jurisdiction of a state, are part of the public domain, and the state may authorize the diversion of such waters for any purpose it deems advantageous to the public without providing compensation to riparian proprietors injuriously affected. Such diversion is not a taking of private property by eminent domain, but is a disposition by the public of public property. *Rice Hope Plantation v. South Carolina Pub. Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132 (1950).

Eminent domain power of housing authority.—The Columbia Housing Authority may exercise the power of eminent domain if that power be necessary in acquiring property for slum clearance or low-cost housing. Because of the public purpose of this project, such action does not constitute taking property for private purposes within the prohibition of this section of the Constitution. *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

Permitting minor to borrow.—Statute authorizing minor to borrow, without requiring his guardian to post a bond, is not a "taking" of private property. *Lynch v. Stanton*, 168 S. C. 249, 167 S. E. 392 (1933).

Presumption of fraudulent appropriation of public funds.—Section 16-364 of the Code, creating a presumption of fraudulent

appropriation where officers and other persons charged with safekeeping of public funds fail to account for them as required by law, does not violate this section of the Constitution. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Refusal to grant building permit.—This constitutional provision with reference to taking private property for public use without just compensation has no application to the mere refusal of a town council to grant a building permit. *Gasque v. Conway*, 194 S. C. 15, 8 S. E. (2d) 871 (1940).

Requiring railroads to build crossings.—Railroad companies may be required at their own expense not only to establish crossings, but also to abolish grade crossings, to build and maintain suitable bridges or viaducts to carry highways newly laid out over their tracks, or to carry their tracks over such highways. This does not unlawfully deprive railroads of property without compensation or due process. *Prosser v. Seaboard, etc., R. Co.*, 216 S. C. 33, 56 S. E. (2d) 591 (1950).

State interference with right to operate automobile.—An action to enjoin the State Highway Department from interfering with plaintiff's operation of automobile without license plates cannot be maintained under this constitutional provision prohibiting taking of private property for private use without owner's consent or for public use without just compensation. *Baker v. State Highway Dept.*, 166 S. C. 481, 165 S. E. 197 (1932).

Statute changing time for procuring automobile license which permits deduction where previous license was obtained for a full year but not where previous license was only for six months does not violate this section of the Constitution. *Heslep v. State Highway Dept.*, 171 S. C. 186, 171 S. E. 913 (1933).

Taxes on land condemned by State.—Section 25-81 of the Code, providing for taxes due on land condemned by the State Authority, including pro rata taxes for the year in which the land is condemned, does not violate this section of the Constitution in the sense that it provides for payment to the owner of property taken an amount less than the sum fixed as just compensation and therefore constitutes taking property without compensation. *South Carolina Public Service Authority v. 11,754.8 Acres of Land, More or Less, Co. 125 F.* (2d) 738 (1941).

Use of highways for electric transmission lines.—The use by the Authority of the highways for its transmission lines under the State Rural Electrification Act is not

an additional servitude on the land granted by a private owner to the State for highway purposes, and such use by the Authority does not constitute a taking of private property for public use without just compensation. *Lay v. State Rural Electrification Authority*, 182 S. C. 32, 188 S. E. 368 (1936).

II. COMPELLED TO BE A WITNESS.

Construction of section.—The provision relating to self incrimination should be construed in conformity with the following declaration of the Supreme Court of the United States relative to the like Federal constitutional provision: "The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime." *Ex parte Johnson*, 187 S. C. 1, 196 S. E. 164 (1938).

Section applies to any tribunal empowered to subpoena witnesses.—The provision of this section relating to self incrimination is substantially declaratory of the common law, and it is obvious that if the privilege were limited to a criminal prosecution in which the witness was the defendant, it would fail entirely of its fundamental purpose. Hence, it is uniformly held that the privilege is one which may be invoked in any legal investigation, whether judicial or quasi-judicial; that is to say, it applies to examinations before any tribunal or other body that has power to subpoena and compel the attendance of witnesses. *Ex parte Johnson*, 187 S. C. 1, 196 S. E. 164 (1938).

Witness exempt from prosecution is required to testify.—If the immunity provisions provided by statute in any case are valid and sufficient to exempt the witness from any prosecution on account of any transaction to which he may testify, then the examining body or the trial judge, as the case may be, has the power to require him to answer or be subject to attachment for contempt. *Ex parte Johnson*, 187 S. C. 1, 196 S. E. 164 (1938).

But defendant can never be compelled to testify against himself.—Under this section defendant in a criminal case cannot be compelled to testify against himself under any circumstances. The line of cleavage is whether proposed evidence is defendant's testimony or evidence in itself which is unaided by any statement of defendant. *State v. Griffin*, 129 S. C. 200, 124 S. E. 81 (1924).

Although defendant raises no objections to testifying.—*Town Council v. Owens*, 61 S. C. 22, 39 S. E. 184 (1901).

Making defendant stand up does not violate section.—The provision of this section that no person shall be compelled to be a witness against himself is not violated by compelling the defendant in a criminal case to stand up for the purpose of identification. *State v. O'Neal*, 210 S. C. 305, 42 S. E. (2d) 523 (1947).

Nor does comparing defendant's shoes with tracks.—To compel an accused to give up his shoes for the purpose of comparison with tracks made near the scene of the murder and to admit the result of the comparison do not violate this section. *State v. McIntosh*, 94 S. C. 439, 78 S. E. 327 (1913).

Even when forcibly accomplished.—Sheriff's testimony that he compared defendant's shoe with certain tracks which it fitted is not violative of defendant's constitutional privilege of immunity from testimonial compulsion under this section, though sheriff forced defendant to remove her shoe and made adjustment himself. *State v. Griffin*, 129 S. C. 200, 124 S. E. 81 (1924).

Nor cross-examination as to willingness to show feet.—In prosecution for violation of prohibition law, cross-examination of defendant with respect to willingness to exhibit his feet does not show that he was compelled to give testimony against himself. *State v. Harrell*, 142 S. C. 24, 140 S. E. 258 (1927).

But testimony on defendant's refusal to compare feet is inadmissible.—Sheriff's testimony that he compelled defendant to put her foot in a certain track, and that she would not do it in the right way, is inadmissible. *State v. Griffin*, 129 S. C. 200, 124 S. E. 81 (1924).

As is identification on hearing repetition of words by defendant.—Where testimony by the prosecuting witness in a rape action showed that she identified the defendant by his voice when he was compelled to say over and over again certain words used at the scene of the crime, such testimony as to identity was inadmissible and highly prejudicial on the grounds of self incrimination. *State v. Taylor*, 213 S. C. 330, 49 S. E. (2d) 289 (1948).

Defendant may be asked about perjury indictment.—For the purpose of testing the credibility of defendant in a criminal case as witness for himself, he may be asked on cross-examination, without production of record, if he had not been indicted for perjury. *State v. Williamson*, 65 S. C. 242, 43 S. E. 671 (1903).

And if he is maintaining statutory nuisance.—Requiring one by rule on petition to answer under oath whether he is main-

taining a statutory nuisance, which is made a crime by statute, does not require respondent to testify against himself. *State v. Riddock*, 78 S. C. 286, 58 S. E. 803 (1907).

And as to testimony given before mayor's court.—In the trial of a police officer for homicide, wherein he claimed that decedent was shot by a man pursued by the officer, it was proper to ask accused on cross-examination if he did not give certain testimony before the mayor's court showing that the pursued man could not have hit decedent. Such evidence is not improper as in effect compelling accused to testify against himself in violation of this section. *State v. Barwick*, 89 S. C. 153, 71 S. E. 838 (1911).

Voluntary confession as evidence.—A voluntary confession allegedly made before accused was committed or a warrant issued for his arrest is not prohibited by this section from being introduced as evidence. *State v. Miller*, 211 S. C. 306, 45 S. E. (2d) 23 (1947).

Testimony before legislative committee.—As to insufficient language of immunity from prosecution due testimony given before an investigating committee set up by a joint resolution, see *Ex parte Johnson*, 187 S. C. 1, 196 S. E. 164 (1938).

As to privilege of defendant to testify, see *State v. Howard*, 35 S. C. 197, 14 S. E. 481 (1892); *State v. Williamson*, 65 S. C. 242, 43 S. E. 671 (1903); *State v. Barwick*, 89 S. C. 153, 71 S. E. 838 (1911).

III. FORMER JEOPARDY.

This section governs in trials subsequent to it for offenses previously committed. *State v. Richardson*, 47 S. C. 166, 25 S. E. 220 (1896).

And re-establishes common-law principle.—The effect of this section was a re-establishment of the principle of the common law recognized in our State up to the time of the adoption of the Constitution of 1868. *State v. Stephenson*, 54 S. C. 234, 32 S. E. 305 (1899); *State v. Bilton*, 156 S. C. 324, 153 S. E. 269 (1930).

With regard to second prosecution for same crime.—The common-law rule and the constitutional provisions declaratory thereof against the second jeopardy apply in this jurisdiction only to a second prosecution for the same act and crime, both in law and fact, for which the first prosecution was instituted. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950).

It must appear that the offense charged in the subsequent indictment is substantially the same as that charged in the prior in-

dictment. *State v. Switzer*, 65 S. C. 187, 43 S. E. 513 (1903).

Punishment for single act combining two offenses.—When a single act combines the requisite ingredients of two distinct offenses, the defendant may be severally indicted and punished for each without being put in double jeopardy. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950).

General test for double jeopardy.—The test generally applied to determine double jeopardy is whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first indictment. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950).

Distinction between "autrefois acquit" and "former jeopardy."—"Autrefois acquit" is a plea made by a defendant that he has been formerly tried and acquitted of the same offense. *State v. Bilton*, 156 S. C. 324, 153 S. E. 269 (1930).

Jeopardy begins when jury is impaneled.—As a general rule one is in jeopardy when a legal jury is sworn and impaneled to try him upon a valid indictment in a competent court, unless the jury before reaching a verdict be discharged with the prisoner's consent or upon some ground of legal necessity, or the verdict if rendered be set aside according to law. *State v. Stephenson*, 54 S. C. 234, 32 S. E. 305 (1899); *State v. Bilton*, 156 S. C. 324, 153 S. E. 269 (1930).

Effect of sustaining plea of former jeopardy.—In sustaining a plea of former jeopardy, the defendant's innocence is not involved, but the court simply declares he cannot be again tried for same crime. *State v. Bilton*, 156 S. C. 324, 153 S. E. 269 (1930).

Effect of jury dismissal for failure to agree.—A trial which results in the dismissal of the jury for failure to agree is not former jeopardy, where there was no abuse of discretion in dismissing the jury. *State v. Stephenson*, 54 S. C. 234, 32 S. E. 305 (1899).

Mistrial for inability of jury to agree operates to prevent plea of former jeopardy. *State v. Bilton*, 156 S. C. 324, 153 S. E. 269 (1930).

In *State v. Farne*, 190 S. C. 75, 1 S. E. (2d) 912 (1939) the court held that the trial judge did not fall into error in overruling the plea of former jeopardy when the defendant pleaded that on a prior trial for the same offense, the jury were unable to agree and were discharged without the presence of the defendant.

Effect of mistrial generally.—A trial judge, under circumstances other than

jury's failure to agree, many declare a mistrial without giving the defendant right to legally assert former jeopardy. *State v. Bilton*, 156 S. C. 324, 153 S. E. 269 (1930).

Effect of trial before jury of eleven men.—Unless the defendant expressly consents thereto, he is not put in jeopardy when tried before a jury of eleven men as the Constitution requires a jury of twelve men. *State v. Coleman*, 54 S. C. 282, 32 S. E. 406 (1899).

Murder acquittal is not good as to another killing.—Where accused, having killed three persons in one affray, was separately indicted for murder for each killing and, on trial upon one indictment, was acquitted, such acquittal was not a bar to prosecution upon one of the other indictments, since the accused had committed a separate act against each one killed. Nor could accused's claim that his act constituted but one offense be sustained even if the three homicides were a single act on his part, for more than one offense may follow from a single act, and in any event this section prohibits double jeopardy "for the same offense" and not for the same act. *State v. Corbett*, 117 S. C. 356, 109 S. E. 133 (1921).

Murder conviction does not bar prosecution for arson.—Where accused, after shooting a person in his dwelling house and striking him on the head with an axe, set fire to the dwelling house, his conviction for murder under an indictment charging a killing with a pistol and an axe did not bar a prosecution for arson under this section. *State v. Rodgers*, 100 S. C. 77, 84 S. E. 304 (1915).

Murder conviction set aside on appeal.—Where a conviction of murder is set aside on appeal, the accused may be again tried upon the same charge. *State v. Wyse*, 33 S. C. 582, 12 S. E. 556 (1891).

Murder indictment resulting in manslaughter conviction.—Where defendant is indicted for murder and convicted of manslaughter, he may again be tried for murder following the granting of his own motion for a new trial. *State v. Gillis*, 73 S. C. 318, 53 S. E. 487 (1906).

Reversal of conviction on one of several counts.—A defendant charged with two or more offenses under two or more counts, who by appeal seeks a review of his conviction under one of the counts and obtains a reversal of the conviction, cannot plead former jeopardy upon a new trial granted on the count or counts as to which there was in the former trial an implied acquittal. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950).

Trial under new indictment for burglary and larceny.—Where one indicted for burglary and larceny, and convicted of larceny after the solicitor announced that he would not ask for conviction for burglary on the ground of insufficient testimony and the court stated that it would direct a verdict of "not guilty" as to burglary, obtains a new trial upon appeal with judgment set aside, he may be tried under a new indictment for burglary and larceny. Such new trial is not in violation of this section. *State v. Hamilton*, 80 S. C. 435, 61 S. E. 965 (1908).

Arson attempt acquittal bars trying attempt to burn same building.—An acquittal on an indictment charging an attempt to commit arson in attempting to burn a storehouse within the curtilage is a bar to an indictment under the same section for attempting to burn the same storehouse, as the evidence, necessary to support the second indictment would have been sufficient to support a legal conviction on the first. *State v. Switzer*, 65 S. C. 187, 43 S. E. 513 (1903).

Breaking and entry acquittal bars trying other offense from same entry.—Accused, having been acquitted of the offense of breaking and entering another's premises in the nighttime with intent to steal, cannot thereafter be put on trial and convicted on account of the same entry for the offense of entering without breaking with intent to steal. *State v. Mitchell*, 98 S. C. 474, 82 S. E. 676 (1914).

IV. INDICTMENT.

Grand jury presentment is needed for trial.—This section requires the presentment of a grand jury as a condition precedent to the trial of a crime, except for certain minor offenses. The grand jury is a constituent part of the court, and without its presentment the court has no jurisdiction of the cause. *State v. Hann*, 196 S. C. 211, 12 S. E. (2d) 720 (1940).

The provisions of § 17-401 are meant to carry this section into effect.—*State v. Brock*, 61 S. C. 141, 39 S. E. 359 (1901).

Right to trial where crime committed is jurisdictional.—The right of a party to be tried in a county where the crime was committed is jurisdictional. Hence, the defendant cannot be lawfully convicted in L. county for selling a mortgaged mule in C.

county. *State v. McCoy*, 98 S. C. 133, 82 S. E. 280 (1914).

Composition of grand jury.—When defendant insists at proper time, he is entitled, as matter of constitutional right, to have grand jury which indicts him composed only of persons which the Constitution has plainly declared may act thereon. *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930).

Legal grand jury must return indictment.—*State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930).

Or else it is set aside.—In *State v. Bibbs*, 192 S. C. 231, 6 S. E. (2d) 276 (1939) a murder indictment was set aside upon the ground that the grand jury which found the indictment was not a legally qualified one, since five members of the jury were not legally registered electors due to the fact that their certificates of registration were not signed in accordance with § 23-71 of the Code.

For conviction on indictment by void grand jury is invalid.—A conviction and sentence based upon an indictment by a void grand jury cannot stand, unless the defendant has waived his right by not interposing his objection in proper time. *State v. Edwards*, 68 S. C. 318, 47 S. E. 395 (1904).

As is conviction on amended indictment substituting different offense.—*State v. Sowell*, 85 S. C. 278, 67 S. E. 316 (1910).

Accessory triable where principal might be indicted.—An accessory before the fact may be tried in the county where the principal might be indicted and tried without violating this constitutional provision. *State v. Farne*, 190 S. C. 75, 1 S. E. (2d) 912 (1939).

Preliminary examination by magistrate in case beyond his jurisdiction.—An act requiring magistrates to hold preliminary examinations in cases beyond their jurisdictions does not oust the grand jury of their ancient right under the Constitution to find bills of indictment where there has been no previous examination before a magistrate. *State v. Bowman*, 43 S. C. 108, 20 S. E. 1010 (1895); *State v. Bullock*, 54 S. C. 300, 32 S. E. 424 (1899).

This rule has been applied to an act requiring magistrates to hold a preliminary investigation on the issue of a warrant charging a crime at the demand of the defendant. *State v. Brown*, 62 S. C. 374, 40 S. E. 776 (1902).

§ 18. Trial by jury; witnesses.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury, and to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defence by himself or by his counsel or by both.

See Const. 1868, Art. I, § 13.

- I. Right To Be Fully Heard.
- II. Compulsory Process.
- III. Right To Be Confronted with Witnesses.
- IV. Nature and Cause of Accusation.
- V. Trial by Impartial Jury.

Cross References.

As to right to jury trial, see S. C. Const., Art. 1, § 25, and Art. 5, § 22. As to privileges and immunities, due process, and equal protection of the laws, see S. C. Const., Art. 1, § 5.

I. RIGHT TO BE FULLY HEARD.

Accused may be fully heard.—Where evidence offered by a defendant in a criminal case is excluded on the ground that it is merely cumulative, the trial court's exercise of discretion in that regard is to be tested by the fundamental principle of criminal jurisprudence that an accused is entitled "to be fully heard in his defense." *State v. Lyle*, 125 S. C. 406, 118 S. E. 803 (1923).

Statutes in conformity with section.—Sections 17-408, 17-506 and 17-507 of the Code are in conformity with this section. *State v. Grant*, 199 S. C. 412, 19 S. E. (2d) 638 (1941).

Assistant counsel may make opening and closing arguments for State.—Permitting the assisting counsel to make opening and closing arguments for the State and to assist in examination of witnesses did not deprive the accused of right to trial conducted by officer charged with conduct of criminal prosecution. *State v. Gregory*, 172 S. C. 329, 174 S. E. 10 (1934).

Dictaphone evidence for prosecution is admissible.—Where defendants in prosecution for murder were put together in cell of jail a few days prior to trial, testimony of their conversation, overheard by officers and detectives through dictaphone, was not inadmissible as taking away defendants' right to be fully heard within provisions of this section. *State v. Hester*, 148 S. C. 360, 146 S. E. 116 (1929).

Conditions for admitting evidence at former trial.—The evidence of a witness who has been examined on a former trial, where the point in issue is the same and

the parties are the same, may be introduced on a second trial (1) where the witness is dead, (2) insane, (3) beyond the seas, and (4) where the court is satisfied that the witness has been kept away by contrivance of the opposite party. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950); *State v. Rogers*, 101 S. C. 280, 85 S. E. 636 (1915); *McCall v. Alexander*, 84 S. C. 187, 65 S. E. 1021 (1909).

Court may reprimand defendant's attorney.—A remark by the court to defendant's attorney after he had engaged in a colloquy with the solicitor, to the effect that the court would require him to take his seat and appoint other counsel to conduct the case for defendant if he could not conduct his argument in a more orderly manner, did not prejudicially affect the rights of defendant. *State v. Bigham*, 119 S. C. 368, 112 S. E. 332 (1922).

For additional related case, see *State v. Atkinson*, 40 S. C. 363, 18 S. E. 1021 (1894).

Quoted in *State v. Rector*, 166 S. C. 335, 164 S. E. 865 (1931).

II. COMPULSORY PROCESS.

Defendant's witness must be material and favorable.—This section does not require the court to issue compulsory process for anyone the accused may designate as a witness. There must be a showing that the person wanted is a witness in favor of accused, and that his testimony will be material. *State v. Pope*, 78 S. C. 264, 58 S. E. 815 (1907).

Bench warrant may be issued for arrest of witness.—This section is sufficiently complied with where accused was awarded compulsory process by which a witness was bound over under recognizance to appear and where a bench warrant was subsequently issued for the arrest of the witness. *State v. Pope*, 78 S. C. 264, 58 S. E. 815 (1907).

And refusal thereof after subpoena issued is error.—Where defendant's witnesses, who had been duly subpoenaed, left the court without defendant's knowledge or consent, the refusal of the court to issue a bench warrant to secure their presence and to postpone the trial until they could be present, on the sole ground that there

would not be time to procure their presence before the adjournment of the term, was a denial of the right of accused under this section to have compulsory process for obtaining witnesses in his behalf. A new trial will be awarded for such refusal, where the testimony of the absent witnesses was material to the defense. *State v. Dodgens*, 120 S. C. 239, 113 S. E. 77 (1922).

Process need not issue if witness resides outside State.—It is not error, in a prosecution for a felony, to refuse to issue a compulsory process for a witness who is shown to be a resident of another state and beyond the court's jurisdiction. *State v. Murphy*, 48 S. C. 1, 25 S. E. 43 (1896).

County is not liable for service of subpoenas.—No liability is created on the part of the county for serving subpoenas for defendant's witnesses. *Whittle v. Saluda County*, 59 S. C. 554, 38 S. E. 168 (1901).

Or for fees of defendant's witnesses.—The county is not liable for the fees of defendant's witnesses where the trial is for a misdemeanor. *Ex parte Henderson*, 51 S. C. 331, 29 S. E. 5 (1898).

For additional related case, see *State v. Sanders*, 68 S. C. 192, 47 S. E. 55 (1904).

Cited in *State v. Crosby*, 88 S. C. 98, 70 S. E. 440 (1911).

III. RIGHT TO BE CONFRONTED WITH WITNESSES.

Personal presence of witness is required so that accused may cross-examine. *State v. Bigham*, 133 S. C. 491, 131 S. E. 603 (1926).

Testimony at prior trial is admissible if witness unavailable.—The constitutional right of an accused to be confronted with the witnesses against him is not infringed by admitting in evidence the stenographer's notes of the testimony on a former trial given by a witness whose presence cannot be secured or who has since died. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950).

But testimony by affidavit cannot be used.—Under this section, if the solicitor gives notice to the attorney for the defendant that he expects to take the evidence of a state's witness by deposition and invites defendant's counsel to appear and cross-examine the witness, the testimony so taken cannot be used against the defendant in his trial, unless the defendant freely consents to allow this to be done. *State v. Hester*, 137 S. C. 145, 134 S. E. 885 (1926).

Even if witness is beyond court's jurisdiction.—Under this section, unless a defendant in a criminal cause consents thereto, the testimony of a witness against him

taken by affidavit cannot be used in the trial, even if the witness is sick or dead or beyond the jurisdiction of the court. *State v. Hester*, 137 S. C. 145, 134 S. E. 885 (1926).

In criminal cases there is no statute in this State authorizing the issuance of a commission to take testimony of an out-of-State witness as there is in civil cases. *State v. Murphy*, 48 S. C. 1, 25 S. E. 43 (1896).

Thus default judgment in civil nuisance proceeding may be inadmissible.—The judgment in an equitable proceeding to enjoin a liquor nuisance, rendered on ex parte affidavits and default, is not admissible on a criminal prosecution of the same person for maintaining the nuisance. To hold such judgment as the basis of res judicata or estoppel would annul the rule that in criminal prosecutions the State must establish defendant's guilt beyond a reasonable doubt before a jury, and admitting the affidavits as part of the record would violate this section guaranteeing defendant the right to be confronted with the witnesses against him. *State v. Weil*, 83 S. C. 478, 65 S. E. 634 (1909).

As may record of alimony proceedings between defendant and wife.—In a prosecution for the murder of his mother-in-law, where defendant introduced some affidavits offered in an alimony proceeding brought by his wife, the entire record which contained the wife's verified complaint was not admissible, though where one party introduces part of a record the other party ordinarily has the right to introduce the whole, since the introduction of such record would deprive defendant of the right given by this section to confront witnesses. *State v. Bramlett*, 114 S. C. 389, 103 S. E. 755 (1920).

Circuit solicitor may testify for defense.—The office of the circuit solicitor does not exempt him from being called as a witness for the defense and from testifying as to any matters, not confidential, within his knowledge relating to the case. *State v. Lee*, 203 S. C. 536, 28 S. E. (2d) 402 (1943).

Judge may not talk to jury foreman in defendant's absence.—A telephone conversation between the trial judge and the jury foreman while the jury was out, and when neither defendant nor his counsel were present, was prejudicial error in view of this section guaranteeing a public trial. *State v. Ashley*, 121 S. C. 15, 113 S. E. 305 (1922).

Or receive information about defendant in chambers at such time.—It is a violation

of defendant's rights under this section for the court, in determining sentence, to consider information concerning defendant received in chambers and in absence of defendant or his counsel. *State v. Simms*, 131 S. C. 422, 127 S. E. 840 (1925).

Defendant may leave court during testimony of witness.—A conviction will not be set aside under the provisions of this section because defendant left the courtroom for a moment while the witness was testifying, his counsel being advised of the fact and it not being called to the attention of the court until after the verdict. *State v. Bramlett*, 114 S. C. 389, 103 S. E. 755 (1920).

Or when evidence already given is read to jury.—The fact that defendant in a murder trial was absent from the courtroom when evidence already given was read over to the jury at their request, after they had retired to make up their verdict, does not violate this section. *State v. Haines*, 36 S. C. 504, 15 S. E. 555 (1892).

And need not attend motion for change of venue.—Where a defendant indicted for murder is represented by counsel, it is not essential that he be personally present at the hearing of motions for change of venue and continuance, either at common law or under this section, as the trial does not commence until after the motions are disposed of by court ruling. *State v. Faries*, 125 S. C. 281, 118 S. E. 620 (1923).

Or require witnesses to answer.—Where no request was made by defendant's counsel to order witnesses to testify, and where an examination of the testimony showed that the questions which the witnesses failed to answer had already been answered, it was held that this section was not violated when the court failed to require witnesses to answer. *State v. McGee*, 185 S. C. 184, 193 S. E. 303 (1937).

Jury may view place of crime.—Defendant is not by the jury's viewing the place of the crime deprived of the right to be confronted with or to cross-examine any witness in the case. *State v. Suber*, 89 S. C. 100, 71 S. E. 466 (1911).

In absence of judge.—It cannot reasonably be supposed that defendant's rights would in any respect be prejudiced by the absence of the judge when the jury merely viewed the place of the crime. *State v. Suber*, 89 S. C. 100, 71 S. E. 466 (1911).

Evidence insufficient to support alleged deprivation of fair trial.—Evidence was held not to support the exception that defendant, convicted of murder, was deprived of fair and impartial trial by the arrest of eyewitnesses, the refusal to allow them to talk to

anyone connected with defense, or promises of leniency if codefendants and other eyewitnesses testified against defendant. *State v. Williams*, 166 S. C. 63, 164 S. E. 415 (1932).

Valid presumption of fraudulent appropriation of public funds.—Section 16-364, creating a presumption of fraudulent appropriation where officers and other persons charged with safekeeping of public funds fail to account for them as required by law, does not violate this section of the Constitution. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Cited in Fahey v. Haynes, 111 S. C. 132, 96 S. E. 694 (1918); *State v. Hughes*, 56 S. C. 540, 35 S. E. 214 (1900).

IV. NATURE AND CAUSE OF ACCUSATION.

Section refers to trial and not arrest.—This section refers to the trial of the accused and not to his arrest for the crime of which he may be accused. *Mayesville v. Clamp*, 149 S. C. 346, 147 S. E. 455 (1929).

Arrest warrant need not fully inform accused of charge.—An accused may be arrested on a warrant that does not fully inform him of the nature and cause of the accusation. *Mayesville v. Clamp*, 149 S. C. 346, 147 S. E. 455 (1929).

But full information may be demanded at trial.—When accused is brought to trial, he may demand the information to which he is entitled. *Mayesville v. Clamp*, 149 S. C. 346, 147 S. E. 455 (1929).

Defendant may waive this constitutional provision.—*State v. Faile*, 43 S. C. 52, 20 S. E. 798 (1895).

Judge may secure information in open court.—The trial judge, in passing sentence, may secure information in open court in the presence of defendant without violating defendant's rights under this section. *State v. Rickenbacker*, 138 S. C. 24, 135 S. E. 651 (1926); *State v. Bolin*, 149 S. C. 84, 146 S. E. 695 (1929).

Name of accused must appear in indictment.—An act authorizing a conviction under the charge in an indictment of a sale "to divers other persons" is unconstitutional, since such act cannot override constitutional requirements that every accused must have his offense fully set forth in the indictment. *State v. Couch*, 54 S. C. 286, 32 S. E. 408 (1899).

Indictment sufficient for statutory rape.—An indictment charging the defendant with statutory rape under § 16-80 of the Code, and in addition thereto charging common law rape under § 16-71 of the Code, was held to be good after the additional charge

was stricken off as mere surplusage, and the corrected indictment did not violate any of defendant's constitutional rights. *State v. Horton*, 209 S. C. 151, 39 S. E. (2d) 222 (1946).

For illegally selling liquor.—An indictment for selling intoxicating liquors which charges a complete offense is not invalid because, in addition thereto, it charges sales to divers other persons unknown to the grand jury. Such averment is surplusage which may either be stricken or disregarded. *State v. Jeffcoat*, 54 S. C. 196, 32 S. E. 298 (1899).

And for illegally soliciting emigrants to labor.—An indictment charging the defendant on a certain day with unlawfully soliciting emigrants to labor without the State, without having obtained a license therefor, states a crime with sufficient definiteness, even though it does not specify the specific acts of hiring or soliciting, as it charges sufficiently a continuation or succession of acts. *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902).

Obtaining counsel and witnesses where suspended sentence vacated.—Where the judge vacates conditions of suspended sentence and orders it to become effective immediately, it is not error as a matter of law to refuse defendant sufficient time to obtain counsel and witnesses under this section by fixing time within which defendant is required to make return, leaving him only one day to prepare his case. *State v. Stauss*, 114 S. C. 445, 103 S. E. 769 (1920).

Stated in *State v. Johnston*, 149 S. C. 195, 146 S. E. 657 (1929).

Cited in *State v. King*, 158 S. C. 251, 155 S. E. 409 (1930); *State v. Ashe*, 89 S. C. 160, 71 S. E. 827 (1911); *Honea Path v. Wright*, 194 S. C. 461, 9 S. E. (2d) 924 (1940); *State v. Fisher*, 206 S. C. 220, 33 S. E. (2d) 495 (1945).

V. TRIAL BY IMPARTIAL JURY.

Hostile crowd may deprive accused of fair trial.—Where a large crowd of people intensely hostile to the defendants crowded the courthouse during their trial for murder and filled the space within the bar immediately around the judge, the jury, and the witnesses, so that counsel for accused did not see the jury until he addressed them because of the crowd, and where the crowd's intrusion into that part of the courtroom was calculated to overawe the jury which was not so safeguarded against extraneous influences as to allow the defendants the right of trial by an impartial jury guaranteed by this section, the defendants upon conviction were entitled to a new trial. *State v. Weldon*, 91 S. C. 29, 74 S. E. 43 (1912).

New trial where juror is constable.—Accused convicted of homicide was held entitled to a new trial where one of the jurors who convicted him was a bonded constable and where attorney of accused had exercised due diligence to determine juror's status. *State v. Elliott*, 169 S. C. 208, 168 S. E. 546 (1933).

Time in which accused may argue defense.—This constitutional provision, together with § 56-143 of the Code, gives to a party accused of crime two hours, as a matter of right, in which to argue his defense before a jury. *State v. Ballenger*, 202 S. C. 155, 24 S. E. (2d) 175 (1943).

Cited in *State v. Rowell*, 75 S. C. 494, 56 S. E. 23 (1906); *State v. Langford*, 74 S. C. 460, 55 S. E. 120 (1906); *State v. Hall*, 137 S. C. 261, 101 S. E. 662 (1919); *Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929); *State v. Pridmore*, 163 S. C. 97, 161 S. E. 340 (1931); *State v. Bramlett*, 166 S. C. 323, 164 S. E. 873 (1932); *State v. Rasor*, 168 S. C. 221, 167 S. E. 396 (1933).

§ 19. Excessive bail; corporal punishment; contempt.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, nor shall witnesses be unreasonably detained. Corporal punishment shall not be inflicted. The power to punish for contempt shall not in any case extend to imprisonment in the State penitentiary.

See Const. 1868, Art. I, § 38.

I. General Consideration.

II. Application of Section.

Cross Reference.

As to sentence to hard labor, see § 17-554 of the Code.

I. GENERAL CONSIDERATION.

Scope of section.—This constitutional restriction is an admonition not confined to the legislature alone. It is also intended to embrace the legislature and the judiciary.

Singletary v. Wilson, 191 S. C. 153, 3 S. E. (2d) 802 (1939).

Court may punish subject to inhibition of section.—It seems to be generally conceded that the levy of punishment when the accused is found guilty by the jury can be left to the court, subject to the constitutional inhibition of this section. *Singletary v. Wilson*, 191 S. C. 153, 3 S. E. (2d) 802 (1939).

Power to impose fine is limited if maximum penalty not fixed.—It is generally the case that in enacting penal statutes the legislature fixes and designates a maximum penalty. When this is not done, the power to impose a fine is limited by this constitutional provision. *Singletary v. Wilson*, 191 S. C. 153, 3 S. E. (2d) 802 (1939).

And such power is subject to review.—The discretion of the trial court in its determination of the amount of the penalty, where the maximum amount of the fine is not fixed by statute, must if clearly abused be subject to be reviewed on appeal to the Supreme Court under this section of the Constitution. *Singletary v. Wilson*, 191 S. C. 153, 3 S. E. (2d) 802 (1939); *State v. Kimbrough*, 212 S. C. 348, 46 S. E. (2d) 273 (1948).

Unless sentence is within legal limits.—The Supreme Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law for the exercise of discretion by the trial judge and is not the result of partiality, prejudice, oppression, or corrupt motive. *State v. Bell*, 215 S. C. 311, 54 S. E. (2d) 900 (1949).

For additional related case, see *Ex parte Keeler*, 45 S. C. 537, 23 S. E. 865 (1896).

Applied in *State v. Phillips*, 215 S. C. 314, 54 S. E. (2d) 901 (1949); *State v. White*, 215 S. C. 450, 55 S. E. (2d) 785 (1949).

Cited in *State v. Charleston Bridge Co.*, 113 S. C. 116, 101 S. E. 657 (1919); *State v. Hondros*, 100 S. C. 242, 84 S. E. 781 (1915); *State v. Phillips*, 193 S. C. 273, 8 S. E. (2d) 626 (1940).

II. APPLICATION OF SECTION.

Women may be sentenced to hard labor.—Sentencing a woman to thirty months hard labor does not constitute cruel or unreasonable punishment. *State v. Huffstetler*, 213 S. C. 319, 49 S. E. (2d) 585 (1948).

Sentence to both chain gang and penitentiary is valid.—Sentence to county chain gang for period of six months and for a like period at hard labor in the State Penitentiary on conviction for transporting intoxicating liquor is not unjust, unreason-

able, or excessive in violation of this section. *State v. Harrell*, 142 S. C. 24, 140 S. E. 258 (1927).

As is sentence to year's imprisonment with six months suspended.—Suspending six months of sentence to twelve months' imprisonment for unlawful possession of intoxicating liquor, where twelve months' imprisonment is within limitation prescribed by law, is not violative of this section as unjust, unreasonable, or excessive. *State v. Harrell*, 142 S. C. 24, 140 S. E. 258 (1927).

Or eighteen months imprisonment with half suspended.—Where appellant took liquor from his retail liquor store, required by law to be closed at sundown, and placed it in the office of his grocery store which he kept open until midnight, upon conviction therefor receiving eighteen months imprisonment with half suspended, it was held that such sentence did not violate this section. *State v. Brandon*, 210 S. C. 495, 43 S. E. (2d) 449 (1947).

Or year at hard labor where nine months suspended.—In prosecution for storing and possessing intoxicating liquor, a sentence to twelve months at hard labor on public works or for like period in State Penitentiary, nine months thereof being suspended during good behavior, is not abuse of good discretion, as violating this section. *State v. Quick*, 141 S. C. 442, 140 S. E. 97 (1927).

Or concurrent sentences of eight and twelve months respectively.—Concurrent sentences of eight and twelve months, respectively, on each of two counts for possessing and transporting liquor is not excessive. *State v. Martin*, 155 S. C. 495, 152 S. E. 738 (1930).

Or fine of one hundred dollars.—In a prosecution for violation of a town ordinance by storing and selling intoxicants, fines of \$100 for the selling and of a like amount for the storing, were not an abuse of the trial court's discretion. *Belton v. Campbell*, 103 S. C. 424, 88 S. E. 30 (1916).

Or fine imposed by mayor within limits prescribed by ordinance.—Where a fine imposed by a mayor is within the limits prescribed by charter and ordinance, there is no error of law in imposing a fine within those limits, and the matter is exclusively within the discretion of the mayor. *Greenville v. Kemmis*, 58 S. C. 427, 36 S. E. 727 (1900).

Or sentence for grand larceny.—A sentence of nine years and six months for grand larceny, being within the limit of the punishment prescribed by § 17-552, is not so severe as to violate this section.

State v. Hurt, 212 S. C. 461, 48 S. E. (2d) 313 (1948).

Or ten-year sentence for possession of burglary tools.—A sentence of ten years for unlawful possession of tools adequate for use in burglary or larceny does not violate that part of this section relating to cruel and unusual punishment. State v. Pulley, 216 S. C. 552, 59 S. E. (2d) 155 (1950).

But thirty-year sentence for burglary may violate section.—A sentence of 30 years for burglary under § 16-331 of the Code, on verdict of guilty with recommendation of mercy, was set aside as a violation of this section. State v. Kimbrough, 212 S. C. 348, 46 S. E. (2d) 273 (1948).

§ 20. Right of bail; sureties.

All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

See Const. 1868, Art. I, § 16.

Cited in Gilmer v. Hunnicutt, 57 S. C. 166, 35 S. E. 521 (1900).

§ 21. Libel.

In all indictments or prosecutions for libel, the truth of the alleged libel may be given in evidence, and the jury shall be the judges of the law and the facts.

See Const. 1868, Art. I, § 8.

This section does not apply to civil actions. Duncan v. Record Pub. Co., 145 S. C. 196, 143 S. E. 31 (1927).

Judge should declare to jury law applicable to libel.—It is not only the right but the duty of the presiding judge upon trial of indictments for libel to declare to the jury the law applicable thereto. If he has

erred in so doing, such error may be reviewed on appeal by the accused just as in any other case. State v. Syphrett, 27 S. C. 29, 2 S. E. 624 (1887).

Stated in State v. Brock, 61 S. C. 141, 39 S. E. 359 (1901); **Butler v. Ellerbe,** 44 S. C. 256, 22 S. E. 425 (1895).

§ 22. Treason.

Treason against the State shall consist alone in levying war or in giving aid and comfort to enemies against the State. No person shall be held guilty of treason, except upon testimony of at least two witnesses to the same overt act, or upon confession in open Court.

§ 23. Habeas corpus.

The privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it.

See Const. 1868, Art. I, § 17.

Cross reference.—As to authority of the Governor to call out the militia, see §§ 44-114 and 44-115.

Suspension of writ in absence of threat to public safety.—Where the Governor declared a state of insurrection in order to force State highway commissioners out of

office and suspended the writ of habeas corpus to persons violating the proclamation of insurrection, he exceeded his authority because there was no threat to the peace of the State. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

§ 24. Imprisonment for debt.

No person shall be imprisoned for debt except in cases of fraud.

See Const. 1868, Art. I, § 20.

Cross Reference.—As to penalty for knowingly selling personal property under lien, see § 45-157.

Definition of "debt."—Debt is that which is due from one person to another, whether money, goods, or services, and whether pay-

able at present or at a future time. *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19 (1908).

"Debt" does not include tort liability or criminal fine.—The term "debt" within the meaning of this section embraces obligations arising out of contract and excludes liability for tort and for fines imposed for crime. *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19 (1908).

A judgment in an action of tort is not a "debt" within the meaning of this section. *Ex parte Berry*, 85 S. C. 243, 67 S. E. 225 (1910).

Contractor may be imprisoned for failure to pay laborers.—Sections 45-301 and 45-302, providing that contractors pay laborers employed out of money received for contract and giving laborers a lien on such money, and further providing fine or imprisonment for violation of said sections of the Code, do not violate this section of the Constitution. *State v. Hertzog*, 92 S. C. 14, 75 S. E. 374 (1912).

And husband for failure to support wife.—An act making it a misdemeanor for a husband to abandon his wife and to fail to support her without just cause, punishable by imprisonment, does not violate this section prohibiting imprisonment for

debt, since the imprisonment is not for any "debt," but for failure to obey the statute obligations incident to the marriage contract or relation. *State v. English*, 101 S. C. 304, 85 S. E. 721 (1915); *State v. Redmond*, 150 S. C. 452, 148 S. E. 474 (1929).

Tax ordinance may be enforced by imprisonment.—Where the adoption of an ordinance imposing a tax or a debt is within the delegated powers of a town, a provision in the ordinance for its enforcement by fine and imprisonment is entirely proper and does not violate this constitutional provision. *Marion v. Baxley*, 192 S. C. 112, 5 S. E. (2d) 573 (1939).

But imprisoning farm laborer for breach of contract violates section.—An act providing for prosecution for breach of farm labor contracts, and upon conviction therefor either imprisonment or fine of the farm laborer effecting the breach, is in violation of this section. *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19 (1908), which in effect overrules *Ex parte Williams*, 32 S. C. 583, 10 S. E. 551 (1890); *State v. Chapman*, 56 S. C. 420, 34 S. E. 961 (1900); *State v. Easterlin*, 61 S. C. 71, 39 S. E. 250 (1901).

Stated in *State v. Moore*, 128 S. C. 192, 122 S. E. 672 (1924).

§ 25. Trial by jury.

The right of trial by jury shall be preserved inviolate.

This section applies to civil and criminal cases. *Best v. Barnwell County*, 114 S. C. 123, 103 S. E. 479 (1920).

Jury trials obtain only where allowed when Constitution adopted.—This section only preserves jury trials in those cases where they were allowed at time of adoption of the Constitution. *Com'rs v. Seabrook*, 2 Strob. (33 S. C. L.) 560; *State v. Gibbes*, 109 S. C. 135, 95 S. E. 346 (1918).

For example, at the time of the adoption of the first Constitution by the State of South Carolina, neither party to a proceeding in quo warranto had a right under existing law or prevailing practice to demand a jury trial of issues of fact. *State v. Gibbes*, 109 S. C. 135, 95 S. E. 346 (1918).

And mode of forming and empanelling jury may be changed. *State v. Boatright*, 10 Rich. (44 S. C. L.) 407; *State v. Clayton*, 11 Rich. (45 S. C. L.) 581.

Trial may be had after demurrer to indictment overruled.—Where a defendant demurs to an indictment charging a misdemeanor and it is overruled, he is entitled to plead thereto and to be tried by a jury.

State v. Bardin, 64 S. C. 206, 41 S. E. 959 (1902).

Failure to pay jury costs does not waive right to jury trial.—The right to a trial by jury in a judicial magistrate's court in the city of Charleston is not waived by failure of defendant to pay the costs of summoning and paying jurors. *Pinckney v. Green*, 67 S. C. 309, 45 S. E. 202 (1903).

Jury trying capital felony must consist of twelve men.—In view of this section one charged with a capital felony, who has demanded a trial by jury, cannot be tried by any other than a jury of twelve men. His attorney cannot consent to a trial by eleven men, notwithstanding that accused remains silent and testifies before the eleven men. *State v. Hall*, 137 S. C. 261, 101 S. E. 662 (1919).

Court alone may adjudge existence of nuisance.—A statutory nuisance may be declared by the court to be maintained by one without a trial and conviction of such person by a jury. Such adjudication by the court does not deprive the individual of the right to trial by jury. *State v. Riddock & Byrnes*, 78 S. C. 286, 58 S. E. 803 (1907).

Highway condemnation procedure does not violate section.—The condemnation proceedings provided for in the Code, permitting the State Highway Department to condemn private lands, do not violate this section of the Constitution. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Goods sold on Sunday may be confiscated.—An act authorizing confiscation and sale of goods offered or exposed for sale on Sunday does not deny right to jury trial. *Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929).

Copy of indictment may be required in malicious prosecution action.—A rule of court, requiring copy of indictment for felony to be obtained by order of the judge who tried it before an action for malicious prosecution shall be commenced, is no abridgement of right to jury trial. *Burton v. Watkins*, 2 Hill (20 S. C. L.) 674.

Valid presumption of fraudulent appropriation of public funds.—Section 16-364, creating a presumption of fraudulent ap-

propriation where officers and other persons charged with safekeeping of public funds fail to account for them as required by law, does not violate this section of the Constitution. *State v. Brown*, 178 S. C. 294, 182 S. E. 838 (1935).

Special verdict on special count for carrying concealed weapons.—An indictment for an assault with intent to kill and for carrying concealed weapons must charge in a special count the carrying of the weapon concealed about the person, and the jury must find a special verdict on this count before defendant can be sentenced therefor. *State v. Johnson*, 70 S. C. 384, 50 S. E. (1905).

Cited in *State v. Hughes*, 56 S. C. 540, 35 S. E. 214 (1900); *Greenwood v. Yoe*, 89 S. C. 24, 71 S. E. 238 (1911); *State v. Heaveney*, 146 S. C. 138, 143 S. E. 674 (1928); *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930); *State v. Pridmore*, 163 S. C. 97, 161 S. E. 340 (1931).

§ 26. Keep and bear arms; General Assembly may maintain armies; how soldiers quartered.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As in times of peace armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in the manner to be prescribed by law.

See Const. 1868, Art. I, §§ 28, 29.

Governor may not exceed authority in suppressing insurrection.—The acts of the Governor, lawfully done in the suppression of an insurrection, are immune from interference by the Supreme Court. But when his acts exceed the authority given him by the Constitution and statutes, and are injurious to the personal liberty and property rights of the citizens of the State, they are open to the inquiry and control of the judi-

cial arm of the State. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

But declaration of state of insurrection is not enjoined.—The action of the Governor in declaring that a state of insurrection exists may not be enjoined by the Supreme Court, nor reviewed by it. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

§ 27. Martial law.

No person shall in any case be subject to martial law or to any pains or penalties by virtue of that law, except those employed in the army and navy of the United States, and except the militia in actual service, but by the authority of the General Assembly.

See Const. 1868, Art. I, § 25.

Governor lacks authority to declare martial law.—When the Governor called out the militia and suspended the writ of habeas corpus, he, in effect, declared martial

law, a power the General Assembly has not seen fit to confer upon him. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

§ 28. Navigable waters free; no tax for use of wharf.

All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

See Const. 1868, Art. I, § 40.

Section is declaratory of common-law rights.—Except for the imposition of toll, this section hardly more than sanctioned the common-law rights of the public in navigable water. Thus a street railway, light, and power company and the city of Columbia, acting under a contract with it, were bound by the common law, as well as by express contract, not to obstruct the Columbia Canal. *State v. Columbia Water Power Co.*, 82 S. C. 181, 63 S. E. 884 (1909).

Public purposes in which State may engage under section.—Under this and related sections, navigation, health betterment, flood control, and reforestation of watersheds are public purposes in which the State is interested and may engage. *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935).

Obstruction of highway is public nuisance.—An obstruction of any highway is a public nuisance which, ordinarily, can only be redressed by indictment. *South Carolina Steamboat Co. v. Wilmington, G. & A. R. Co.*, 46 S. C. 327, 24 S. E. 337 (1896).

Which is usually redressed by indictment.—*South Carolina Steamboat Co. v. Wilmington, G. & A. R. Co.*, 46 S. C. 327, 24 S. E. 337 (1896).

Unless special damages can be shown.—The remedy for a public nuisance is by indictment, unless the person instituting civil proceedings can show special damage differing in kind from that to which all others in common with him are exposed. *McMeekin v. Central Carolina Power Co.*, 80 S. C. 512, 61 S. E. 1020 (1908).

Dam erection is not enjoined as mere nuisance.—The erection of a dam across a navigable stream will not be enjoined merely because it will be a public nuisance. *McMeekin v. Central Carolina Power Co.*, 80 S. C. 512, 61 S. E. 1020 (1908).

Canal construction land may not be subject to navigation trust.—Land conveyed for purpose of canal construction was not subject to the navigation trust imposed by the Constitution on all navigable waters. *State v. Broad River Power Co.*, 177 S. C. 240, 181 S. E. 41 (1935).

A statute which relieved successor of grantee of State land from performance of covenant to construct canal on such land was held not unconstitutional as a violation of navigation trust, where such statute reserved a right in the State to extend canal on land in question and where all navigation rights in canal as completed were fully and expressly preserved for benefit of the public. *State v. Board River Power Co.*, 177 S. C. 240, 181 S. E. 41 (1935).

Recovery for special injuries without proof of negligence.—One sustaining special injuries from the obstruction of a navigable stream may recover therefor without proof of negligence. *Drews v. Burton & Co.*, 76 S. C. 362, 57 S. E. 176 (1907).

For additional related case, see *State v. Young*, 30 S. C. 399, 9 S. E. 355 (1889).

Cited in *Carolina Power & Light Co. v. South Carolina Pub. Service Authority*, 20 F. Supp. 854 (1937).

§ 29. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms.

Applicability of general or special law is judicial question.—Under this section, determination as to whether a general law can be applied so as to exclude special laws is a judicial question. *Carolina Grocery*

Co. v. Burnet, 61 S. C. 205, 39 S. E. 381 (1901).

Applied in *Thomas v. Macklen*, 186 S. C. 290, 195 S. E. 539 (1938); *State v. Bibbs*, 192 S. C. 231, 6 S. E. (2d) 276 (1939).

Stated in *Land Mortg., Invest., etc., Co. v. Faulkner*, 45 S. C. 503, 23 S. E. 516, 24 S. E. 288 (1896); *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903); *State v. Adams*, 68 S. C. 421, 47 S. E. 676 (1904); *Asbill v. Martin*, 84 S. C. 271, 66 S. E. 297 (1909); *McAulay v. McAulay*, 96 S. C. 86, 79 S. E. 785 (1913); *Robinson v. McGown*, 104 S. C. 285, 88 S. E. 807 (1916); *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930).

Cited in *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898); *State v. Hammond*, 66 S. C. 219, 44 S. E. 797 (1903); *Wright v. State Board*, 76 S. C. 574, 57 S. E. 536 (1907); *Mills v. Atlantic Coast Line Ry. Co.*, 87 S. C. 158, 69 S. E. 91 (1910); *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927); *Wingfield v. South Carolina Tax Comm.*, 147 S. C. 116, 144 S. E. 846 (1928); *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

ARTICLE II.

RIGHT OF SUFFRAGE.

§ 1. Elections by ballot.

All elections by the people shall be by ballot, and elections shall never be held or the ballots counted in secret.

See Const. 1868, Art VIII, § 1.

Cross reference.—For specific section covering counting of ballots in general, special, and primary elections, see § 23-356.

"Ballot" implies secret voting. *State v. State Board*, 78 S. C. 461, 59 S. E. 145 (1907).

And secrecy of the ballot is absolutely essential. *Corn v. Blackwell*, 191 S. C. 183, 4 S. E. (2d) 254 (1939).

This section applies to municipal as well as State elections. *Darling v. Brunson*, 94 S. C. 207, 77 S. E. 860 (1913).

But not to taxation in special tax districts.—The requirements of this section need not apply to the ascertainment of the will of the people in territorial subdivisions or special tax districts as to laying a tax for themselves instead of by the General Assembly. *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900).

"Election" defined.—An election is the expression of a choice by the voters of a body politic. *State v. State Board*, 78 S. C. 461, 59 S. E. 145 (1907).

"Election" includes every expression of choice by voters of a body politic and embraces local option elections. *State v. State Board*, 78 S. C. 461, 59 S. E. 145 (1907).

Placing names of candidates on ballot.—It is not necessary to place names of all candidates for same office on same ballot. *Gardner v. Blackwell*, 167 S. C. 313, 166 S. E. 338 (1932).

Election petition in lieu of regular election by ballot.—The question of annexation was submitted to the areas to be annexed by an election petition instead of a regular election by ballot. This did not violate this section, since it was not an election within the contemplation of this section. *Sanders v. Greater Greenville Sewer district*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

As to election set aside where ballots counted in secret, see *McKnight v. Smith*, 182 S. C. 378, 189 S. E. 361 (1937).

For additional related case, see *State v. Moore*, 54 S. C. 556, 32 S. E. 700 (1899).

§ 2. Qualification for office; two offices.

Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution. But no person shall hold two offices of honor or profit at the same time: *Provided*, That any person holding another office may at the same time be an officer in the Militia or a Notary Public: *Provided, further*, That the limitation above set forth "But no person shall hold two offices of honor or profit at the same time," shall not apply to the Circuit Judges of the State under the circumstances hereinafter stated, but that whenever it shall appear that any or all of the Justices of the Supreme Court shall be disqualified or be otherwise prevented from presiding in any cause, or causes, for the reasons set forth in Section 6 of Article V of the Constitution, the Chief Justice or in his stead the Senior Associate Justice

shall when available designate the requisite number of Circuit Judges for the hearing and determination thereof.

1930 (36) 1251; 1931 (37) 107.
See Const. 1868, Art. XIV, § 1.

- I. General Consideration.
- II. Application of Section.

I. GENERAL CONSIDERATION.

All officers must be qualified electors.—All officers, constitutional and statutory, and whether elected or appointed, must be qualified electors. The legislature may not add other conditions for eligibility to those specified in the Constitution for election or appointment to constitutional offices, that is, those offices created by the Constitution. As to offices established only by legislative acts, the General Assembly may prescribe other and additional qualifications which are reasonable in their requirements. *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

Registration is essential to constitute one a qualified elector. *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922).

Since "qualified elector" means "registered elector."—The term "qualified elector" means, "registered elector." One who has not been registered as an elector in the county when the court sits is not qualified to serve as a juror in said court. *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899).

Officer has title to latest office to which appointed.—An officer has good title to the latest office to which he is appointed and for which he has duly qualified, which means that he is the incumbent *de jure*. *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

And vacates first office upon qualification to second.—In *State v. Buttz*, 9 S. C. 156 (1877), it was held that when a person holding one office of trust or profit is elected or appointed to another such office and qualifies in the latter capacity, he thereby vacates the first office to which he was elected or appointed and lawfully holds the second office as an office *de jure*. *Walker v. Harris*, 170 S. C. 242, 170 S. E. 270 (1933).

Plaintiff must show personal interest to invoke section.—A suit to invoke this constitutional provision may not be maintained by one who fails to show in his complaint that he has some personal interest in the situation other than that shared in common by other members of the public. *Culbertson v. Blatt*, 194 S. C. 105, 9 S. E. (2d) 218 (1940).

Cited in *Ex parte Lumsden*, 41 S. C. 553, 19 S. E. 749 (1894).

II. APPLICATION OF SECTION.

Section applies to both State and municipal offices.—The prohibition against holding two offices under this section is not limited to State offices, but applies also to municipal offices. *Darling v. Brunson*, 94 S. C. 207, 77 S. E. 860 (1913).

Office of town intendant is an "office of honor." *State v. Coleman*, 54 S. C. 282, 32 S. E. 406 (1899).

And office of circuit court clerk is an "office of profit." *State v. Coleman*, 54 S. C. 282, 32 S. E. 406 (1899).

But position of grand juror is not office "of honor or profit." *State v. Graham*, 79 S. C. 116, 60 S. E. 431 (1908).

As is true of office of notary public.—A person may hold the office of postmaster and notary public at the same time, since the office of notary public is not incompatible with any other office. *Ex parte Ware Furniture Co.*, 49 S. C. 20, 27 S. E. 9 (1897).

And of sinking fund commission membership.—*State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913).

And also ex officio membership on commission.—This section does not limit or affect ex officio membership upon a board or commission of a unit of government which an officer serves in his official capacity, where the functions of the board or commission are related to the duties of the office. *Ashmore v. Greater Greenville Sewer Dist.*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

A mayor in office may not sit upon a board of auditorium trustees. *Ashmore v. Greater Greenville Sewer Dist.*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

And this is true of a chairman of a county board of commissioners. *Ashmore v. Greater Greenville Sewer Dist.*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

Nonresidents may not vote or hold town office.—In *Thomas v. Macklen*, 186 S. C. 290, 195 S. E. 539 (1938), the court held unconstitutional, as obnoxious to this and other constitutional provisions, certain sections of an act which conferred upon non-resident freeholders of a proposed incorporated town the right to vote and to hold office therein.

Medical qualifications of hospital board.—The requirement that three members of a board of seven created to construct and operate a hospital shall be practicing medical doctors in the district appears to be quite reasonable and wise—certainly not arbitrary or discriminatory. There is patent relation between the added qualification and the duties of the office, and only a minority of the board need be so qualified. *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

De facto clerk of court.—One elected, qualified, and commissioned clerk of court,

who is in possession of the office and discharging its duties without anyone claiming it, is a de facto clerk, even though he has accepted the office of intendant of a town. *State v. Coleman*, 54 S. C. 282, 32 S. E. 406 (1899).

De facto trustee of school district.—A member of a township board of assessors, who continues to act as such after his appointment as a trustee of a school district, is a de facto trustee of the school district under the provisions of this section. *Dove v. Kirkland*, 92 S. C. 313, 75 S. E. 503 (1912).

§ 3. Electors.

Every male citizen of this State and of the United States twenty one years of age and upwards, not labouring under the disabilities named in this Constitution and possessing the qualifications required by it, shall be an elector.

See Const. 1868, Art. VIII, § 2.

Cross reference.—As to trial by jury composed of qualified electors, see S. C. Const., Art. 5, § 22.

Bond issue is invalid where electors lack qualifications.—A proposed county bond issue is invalid under this section where the voters fail to produce registration certificates or tax receipts at election at which issue was approved. *Dial v. Watts*, 138 S. C. 468, 136 S. E. 891 (1927).

Grand juror need not be freeholder and taxpayer.—Since this section does not provide that a voter must be a freeholder and taxpayer, a grand juror cannot be disqualified because he is not such. *State v. Williams*, 35 S. C. 344, 14 S. E. 819 (1892).

Property return is not needed in order to vote.—The provisions of Act No. 102, 38 St. at Large, p. 114, requiring that one offering to vote at an election on the question of issuing bonds in a school district election in Greenville County must return

for taxation real and personal property therein, in addition to showing a certificate of registration, are in direct conflict with this section. *Cothran v. West Dunklin Public School District*, 189 S. C. 85, 200 S. E. 95 (1938).

But one without proper registration certificate may not hold office.—In *Blalock v. Johnston*, 180 S. C. 40, 185 S. E. 51 (1936), the court held that the petitioner, having no registration certificate issued to him in the county of Cherokee, was not eligible to hold the office of tax collector of that county.

For additional related case, see *Wright v. State Board*, 76 S. C. 574, 57 S. E. 536 (1907).

Cited in *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899); *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *Wiley v. Sinkler*, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84 (1900).

§ 4. Qualifications for suffrage.

The qualifications for suffrage shall be as follows:

(a) **Residence.**—Residence in the State for two years, in the County one year, in the polling precinct in which the elector offers to vote four months; *Provided*, That ministers in charge of an organized church and teachers of public schools shall be entitled to vote after six months' residence in the State, otherwise qualified.

1929 (36) 695; 1931 (37) 105, 246.

(b) **Registration.**—Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every year of every elector not previously registered under the provisions of this Article.

(c) *Qualification for registration up to January, 1898; list of registered voters.*—Up to January 1st, 1898, all male persons of voting age applying for registration who can read any section in this Constitution submitted to them by the registration officer, or understand and explain it when read to them by the registration officer, shall be entitled to register and become electors. A separate record of all persons registered before January 1st, 1898, sworn to by the registration officer, shall be filed, one copy with the Clerk of Court and one in the office of the Secretary of State, on or before February 1st, 1898, and such persons shall remain during life qualified electors unless disqualified by the other provisions of this Article. The certificate of the Clerk of Court or Secretary of State shall be sufficient evidence to establish the right of Said Citizens to any subsequent registration and the franchise under the limitations herein imposed.

(d) *Qualification for registration after January, 1898.*—Any person who shall apply for registration after January 1st, 1898, if otherwise qualified, shall be registered: *Provided*, That he can both read and write any Section of this Constitution submitted to him by the registration officer, or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars (\$300) or more.

(e) *Payment of taxes necessary for voting.*—[Eliminated.]

1949 (46) 773; 1951 (47) 24.

(f) *Certificate of registration.*—The General Assembly shall provide for issuing to each duly registered elector a certificate of registration, and shall provide for the renewal of such certificate when lost, mutilated or destroyed, if the applicant is still a qualified elector under the provisions of this Constitution, or if he has been registered as provided in subsection (c).

See Const. 1868, Art. VIII, § 2.

- I. General Consideration.
- II. Residence.
- III. Registration.
- IV. Registration up to 1898.
- V. Certificate of Registration.

Cross Reference.

As to registration of qualified elections, see note to Art. 2, § 8 of the Constitution.

I. GENERAL CONSIDERATION.

This section prescribes the qualifications for an elector as suffrage is the right to vote and not the act of voting. *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899).

Without distinction as to race or color.—This section prescribes the qualifications of electors and provides for their registration, all without difference or distinction because of race or color. *State v. Grant*, 199 S. C. 412, 19 S. E. (2d) 638 (1941).

Which may not be replaced by primary election regulations.—The requirements for

suffrage provided by the Constitution may not be replaced by the requirements and regulations applicable to primary elections. *State v. Huntley*, 167 S. C. 476, 166 S. E. 637 (1932).

Stated in *State v. Hann*, 196 S. C. 211, 12 S. E. (2d) 720 (1940); *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

Cited in *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899); *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *Franklin v. South Carolina*, 218 U. S. 161, 30 S. Ct. 640, 54 L. Ed. 980 (1910); *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895).

II. RESIDENCE.

"Residence" means "domicile."—The term "residence" as used in this section has substantially the same meaning as "domicile." *Phillips v. South Carolina Tax Comm.* 195 S. C. 472, 12 S. E. (2d) 13 (1940).

Intention is controlling element. — Resi-

dence of a person being a mixed question of law and fact, his intention is the controlling element. *Clarke v. McCown*, 107 S. C. 209, 92 S. E. 479 (1917).

And may be proved by acts.—The intention of a voter may be proved by his acts, declarations, or other circumstances. *Clarke v. McCown*, 107 S. C. 209, 92 S. E. 479 (1917).

Such as voting in another county.—If a person votes at an election in another county, his act is inconsistent with an intention to retain his residence, and he is not entitled to vote in the county wherein he resides. *Clarke v. McCown*, 107 S. C. 209, 92 S. E. 479 (1917).

Nonresidents may not vote or hold town office.—See note to S. C. Const., Art. 2, § 2.

Registration outside residence district but in proper polling precinct.—Persons signing a petition opposing the consolidation of a school district, who reside within the district but are registered at polling places outside of the district but within the same polling precinct are "qualified voters." *Watson v. Spartanburg County Board*, 141 S. C. 347, 139 S. E. 775 (1927).

For showing insufficient to question validity of section, see *Franklin v. South Carolina*, 218 U. S. 161, 30 S. Ct. 640, 54 L. Ed. 980 (1910).

III. REGISTRATION.

Electors may register at any time during tenth year.—The correct view is that the elector has the right to re-register at any time during the tenth year and is eligible for jury duty, provided that he is otherwise qualified. *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929).

Including those already drawn for jury duty.—This provision is not intended to disqualify persons as jurors who were registered electors when drawn but had not registered immediately at the expiration of the ten-year period before the trying of the case. *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929).

IV. REGISTRATION UP TO 1898.

"Subsequent registration" defined.—Subsequent registration" as used in this section includes any registration after the first registration prior to January 1, 1898. *State v. State Board*, 78 S. C. 461, 59 S. E. 145 (1907).

Registration by proper officer is conclusive until set aside.—This section was cited in *Rawl v. McCown*, 97 S. C. 1, 81 S. E. 958 (1914), in support of the proposition that registration by the proper officers is conclusive until reversed or set aside in the manner prescribed as to qualifications of the elector at the time of registration, although his vote might be challenged on other grounds. See also, *Hunter v. West Greenville*, 146 S. C. 338, 144 S. E. 62 (1928).

V. CERTIFICATE OF REGISTRATION.

Elector may present registration certificate.—Each elector must present to the managers of the election a registration certificate. *Wright v. State Board*, 76 S. C. 574, 57 S. E. 536 (1907).

For which evidence of pre-1898 registration is not substitute.—A clerk's certificate of the registration of a voter prior to January 1, 1898, was not a substitute for a registration certificate required to entitle the voter to vote at a subsequent election, but only evidence of his right to register and obtain the necessary certificate. *State v. State Board*, 78 S. C. 461, 59 S. E. 145 (1907).

Property return is not needed in order to vote.—See note to S. C. Const., Art. 2, § 3.

But one without proper registration certificate may not hold office.—See note to S. C. Const., Art. 2, § 3.

Grand jurors must be qualified electors.—In *State v. Bibbs*, 192 S. C. 231, 6 S. E. (2d) 276 (1939), a murder indictment was set aside upon the ground that the grand jury which found the indictment was not a legally qualified one, since five members of the jury were not legally registered electors because their certificates of registration were not signed in accordance with § 23-71 of the Code.

§ 5. Appeal; crimes against election laws.

Any person denied registration shall have the right to appeal to the Court of Common Pleas, or any Judge thereof, and thence to the Supreme Court, to determine his right to vote under the limitations imposed in this Article, and on such appeal the hearing shall be *de novo*, and the General Assembly shall

provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws.

Cross reference.—As to specific Code section providing for appeals from denial of right to vote, see § 23-73.

Courts have jurisdiction over question of elector's qualification.—The State is not a necessary party, and the question of qualification of an elector is always within the jurisdiction of the courts. *Rawl v. McCown*, 97 S. C. 1, 81 S. E. 958 (1914).

Registration by proper officer is conclu-

sive until set aside.—This section has the effect of declaring that registration by the proper officers is conclusive until reversed or set aside in the manner prescribed as to qualifications of the elector at the time of registration. *Rawl v. McCown*, 97 S. C. 1, 81 S. E. 958 (1914); *Hunter v. West Greenville*, 146 S. C. 338, 144 S. E. 62 (1928).

Stated in *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

§ 6. Persons disqualified from voting.

The following persons are disqualified from being registered or voting:

First, Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen-goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws: *Provided*, That the pardon of the Governor shall remove such disqualification.

Second, Persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison.

See Const. 1868, Art. VIII, § 8.

Cross reference.—As to qualifications of juror, see S. C. Const., Art. 5, § 22.

This section applies to persons convicted before its passage. *Garrett v. Weinberg*, 54 S. C. 127, 31 S. E. 341, 34 S. E. 70 (1899).

Since right to serve as juror is not vested.—*Garrett v. Weinberg*, 54 S. C. 127, 31 S. E. 341, 34 S. E. 70 (1899).

Violating act to regulate commerce may not cause disqualification.—One who has been convicted on plea of guilty of violation of an act to regulate commerce, by making false reports of the weight of certain articles shipped, is not thereby disqualified to serve as a grand juror. *Christopoulos v. United States*, 230 F. 788 (1916).

Larceny conviction of juror as grounds for new trial.—This section disqualifies a citizen from being a juror who has been convicted of larceny. Where none of the parties to an action or their respective counsel had knowledge of the conviction of the juror during the trial, a new trial must be granted. *State v. Robertson*, 54 S. C. 147, 31 S. E. 868 (1899).

For additional related cases, see *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897); *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899).

Cited in *Wiley v. Sinkler*, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84 (1900).

§ 7. Residence gained or lost.

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas, nor while a student of any institution of learning.

See Const. 1868, Art. VIII, §§ 4 and 5.

§ 8. Registration provided; elections; board of registration; books of registration.

The General Assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of

ascertaining the results of the same: *Provided*, At the first registration under this Constitution, and until the first of January, 1898, the registration shall be conducted by a Board of three discreet persons in each County, to be appointed by the Governor, by and with the advice and consent of the Senate. For the first registration to be provided for under this Constitution, the registration books shall be kept open for at least six consecutive weeks; and thereafter from time to time at least one week in each month, up to thirty days next preceeding the first election to be held under this Constitution. The registration books shall be public records open to the inspection of any citizen at all times.

See Const. 1868, Art. VIII, § 3.

Cross reference.—As to appointment and removal of members of county boards of registration, see § 23-51.

Section provides for registration of all qualified as electors.—This section means that the General Assembly shall provide by law for the registration of all persons qualified for registration as electors. *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899).

"Qualified elector" defined.—A "qualified elector" is an elector qualified to vote for members of the General Assembly.

Mew v. Charleston & S. Ry. Co., 55 S. C. 90, 32 S. E. 828 (1899).

For additional related case, see *Wright v. State Board*, 76 S. C. 574, 57 S. E. 536 (1907).

Cited in *Wright v. State Board*, 76 S. C. 574, 57 S. E. 536 (1907); *Smith v. Saye*, 130 S. C. 20, 125 S. E. 269 (1924); *Rawl v. McCown*, 97 S. C. 1, 81 S. E. 958 (1914); *Hunter v. West Greenville*, 146 S. C. 338, 144 S. E. 62 (1928); *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929); *Wiley v. Sinkler*, 179 U. S. 58, 21 S. Ct. 17, 45 L. ed. 84 (1900).

§ 9. Polling precincts.

The General Assembly shall provide for the establishment of polling precincts in the several Counties of the State, and those now existing shall so continue until abolished or changed. Each elector shall be required to vote at his own precinct, but provision shall be made for his transfer to another precinct upon his change of residence.

Election is not enjoined where remedy at law exists.—The Supreme Court, on petition to enjoin an election for a new county, will not consider whether a statute providing for an election is unconstitutional in that it provides for election without making provision for those electors living within proposed boundaries, whose voting precincts are without, to cast their ballots. Such situation may be *damnum absque injuria*, and such voters have an adequate remedy at law by writ of certiorari to the Board of State Canvassers after election. *Parler v. Fogle*, 78 S. C. 570, 59 S. E. 707 (1907).

And may not be void for irregularity if result would be same.—An election in which irregularity in its conduct occurred, depriving certain voters of their rights because no provision was made for their voting in the district where they resided, is not an invalid election where the result would have been the same if they had voted. *State v. Jennings*, 79 S. C. 414, 60 S. E. 967 (1908).

For additional related case, see *Wright v. State Board*, 76 S. C. 574, 57 S. E. 536 (1907).

§ 10. Primary elections. [Eliminated.]

1944 (43) 2344; 1945 (44) 10.

§ 11. Closing books of registration.

The registration books shall close at least thirty days before an election, during which time transfers and registration shall not be legal: *Provided*,

Persons who will become of age during that period shall be entitled to registration before the books are closed.

Section refers to county registration books.—The registration books mentioned in this section are the county registration books. This section does not require the registration books of a city or town to be closed thirty days before an election, and thus the legislature may fix any time within its discretion. *Fowler v. Town Council*, 90 S. C. 352, 73 S. E. 626 (1912); *Davis v. Cayce*, 166 S. C. 372, 164 S. E. 883 (1932).

But not to city registration books.—*Fowler v. Town Council*, 90 S. C. 352, 73 S. E. 626 (1912).

County books must close 30 days before each election.—The county registration books must be closed 30 days before each election, but only as to that election. For any other election or for the general registration of the electors of the State, they may be kept open during that period of time, and certificates and transfers may be

issued. *Gunter v. Gayden*, 84 S. C. 48, 65 S. E. 948 (1909).

But four months' period is unreasonable for closing books.—A law providing for the closing of the registration books four months previous to a general election is unreasonable in that the period prescribed deprives that class of citizens of the right to vote who, being otherwise qualified, have completed their term of residence in the State or county. *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895).

Voter may not complain if allowed to register.—If the voter is given a reasonable opportunity to register, he is not in a position to complain that any of his constitutional or statutory rights have been violated. *Whitmire v. Cass*, 213 S. C. 230, 49 S. E. (2d) 1 (1948).

Cited in *Dial v. Watts*, 138 S. C. 468, 136 S. E. 891 (1927); *Hunter v. West Greenville*, 146 S. C. 338, 144 S. E. 62 (1928).

§ 12. Municipal elections.

Electors in municipal elections shall possess the qualifications and be subject to the disqualifications herein prescribed. The production of a certificate of registration from the registration officers of the county as an elector at a precinct included in the incorporated city or town in which the voter desires to vote is declared a condition prerequisite to his voting in a municipal election, and in addition he must have been a resident within the corporate limits at least four months before the election. The General Assembly may provide for such additional registration for voters in municipal elections as it deems desirable.

1939 (41) 217; 1941 (42) 201; 1942 (42) 1431; 1950 (46) 2670; 1951 (47) 18.

Cross reference.—As to qualifications for voting in municipal elections, see § 23-111.

Section does not require registration books to be closed.—This section contains no requirement for the closing of the registration books at any time before the election. *Fowler v. Town Council*, 90 S. C. 352, 73 S. E. 626 (1912).

Registration concludes collateral inquiry into qualifications of elector at time it was granted. *Davis v. Saluda*, 147 S. C. 498, 145 S. E. 412 (1928).

Registration of municipal voters is needed only for regular elections.—Registration of qualified voters in municipalities must be had only for what may be called regular elections, as contra-distinguished from special elections, in order for them to be allowed to vote on any question submitted

at a special election. *Hunter v. Senn*, 61 S. C. 44, 39 S. E. 235 (1901).

And is not required for special elections.—Where every voter at a special election had in his possession a certificate of registration issued to him by the county board of registration and otherwise complied with constitutional requirements, an objection that the provisions of the statute under which the election was held were unconstitutional in not providing for registration at the special election did not affect the validity of the election. *Hunter v. Senn*, 61 S. C. 44, 39 S. E. 235 (1901).

As registration for general municipal election includes registration for special.—*Bray v. City Council*, 62 S. C. 57, 39 S. E. 810 (1901).

Vote is legal though voting place outside municipality but within precinct.—A vote cast in a municipal election by a qualified voter is not illegal under this section because the county registration certificate designates his voting place outside of said municipality but within same voting precinct. *Hunter v. West Greenville*, 146 S. C. 338, 144 S. E. 62 (1928).

County registration certificate must be shown to town officer.—It is the intention of this section that the showing of the county registration certificate be made before a town registration officer and not before the managers of the election. *Davis v. Saluda*, 147 S. C. 498, 145 S. E. 412 (1928).

A resident of a city cannot be alderman if not registered. *State v. City Council*, 95 S. C. 131, 78 S. E. 738 (1913). Nor mayor, *State v. Williams*, 157 S. C. 290, 154 S. E. 164 (1930).

Nonresidents may not vote or hold town office.—See note to S. C. Const., Art. 2, § 2.

Showing tax receipts at municipal election.—It is unnecessary under this section that voters at municipal election show tax receipts at time of voting where no tax period intervened after registration. *Davis v. Saluda*, 147 S. C. 498, 145 S. E. 412 (1928).

For additional related case, see *Gunter v. Gayden*, 84 S. C. 48, 65 S. E. 948 (1909).

Quoted in *Davis v. Cayce*, 166 S. C. 372, 164 S. E. 883 (1932).

Stated in *Hunter v. Senn*, 61 S. C. 44, 39 S. E. 235 (1901).

Cited in *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897); *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *Burriss v. Brock* 95 S. C. 104, 79 S. E. 193 (1913); *Darling v. Brunson*, 94 S. C. 207, 77 S. E. 860 (1913); *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915); *Acker v. Cooley*, 177 S. C. 144, 181 S. E. 10 (1934).

§ 13. Special election for bonding municipality.

In authorizing a special election in any incorporated city or town in this State for the purpose of bonding the same, the General Assembly shall prescribe as a condition precedent to the holding of said election a petition from a majority of the freeholders of said city or town as shown by its tax books, and at such elections all electors of such city or town who are duly qualified for voting under Section 12 of this Article, and who have paid all taxes, State, County and municipal, for the previous year, shall be allowed to vote; and the vote of a majority of those voting in said election shall be necessary to authorize the issue of said bonds.

Provided, That the General Assembly need not prescribe any such petition as a condition precedent to the holding of any such election in the City of Columbia, where the proceeds of the bonds are authorized to be used solely for the purpose of enlarging, extending and repairing a sewerage system and plant or a waterworks system and plant, or for the purchase, building and maintenance of fire stations, fire alarm systems and fire equipment, or for any one or more of said purposes.

1930 (36) 1209; 1931 (37) 109.

Provided, further, That the limitations imposed by this section [Art. 8, § 7] and by Section 5 of Article X of the Constitution shall not apply to any bonded indebtedness incurred by the City of Columbia, where the bonded indebtedness is authorized to be incurred for the purpose of enlarging and maintaining its fire department or for purchase, building and maintenance of fire stations, fire alarm systems or fire equipment, or for any one or more of said purposes, and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said City at an election or elections to be called by the City council of said City, and a majority of those voting thereon shall vote in favor thereof; and the General Assembly need not prescribe as a condition

precedent to the holding of any such election a petition from the freeholders as provided in Section 13 of Article II of the Constitution.

1930 (36) 1207, 1931 (37) 110.

This section controls the elections provided for in S. C. Const., Art. 8, §§ 5 and 7. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

It applies to special elections in "incorporated city or town."—An act enlarging a school district, and authorizing the trustees of the new enlarged district to hold an election on the question of issuing bonds without requiring as a condition precedent thereto a petition of a majority of the freeholders of the district, does not violate this section, since it applies to a special election in any "incorporated city or town." *Burriss v. Brock*, 95 S. C. 104, 79 S. E. 193 (1913); *Brownlee v. Brock*, 107 S. C. 230, 92 S. E. 477 (1917).

But not to county elections.—*Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Majority of freeholders must make petition.—This section does not repeal the sp. act of Dec. 24, 1890, 20 Stat. 976, but merely nullifies so much of said act as is inconsistent with the Constitution, or rather the special act must be read as if amended, so as to prescribe for electors thereunder the qualifications required under the Constitution and to require a petition by a majority of the freeholders instead of one third. *Cleveland v. City Council*, 54 S. C. 83, 31 S. E. 871 (1899).

Petition signed by majority of freehold "voters" is unconstitutional.—An act authorizing all cities and towns to build, equip, and operate a system of waterworks and electric lights; to issue bonds to meet the costs of same; and providing that "before any election shall be held under the provisions of this act, a majority of the freehold voters of said city or town shall petition the city council that the said election be ordered" is unconstitutional under this section in that it requires the petition be signed by a majority of the freehold "voters." *State v. Evans*, 47 S. C. 418, 25 S. E. 216 (1896).

But law dispensing with petition may be constitutional.—A law relating to issuance of school bonds is not unconstitutional because it dispenses with freeholder's petition. *Riser v. Blume*, 159 S. C. 438, 157 S. E. 615 (1931).

Issuing certificates of past-due indebtedness does not require election.—An act authorizing city to issue certificates of indebtedness, evidencing amounts of past due and unpaid taxes, does not create new indebtedness without petition and election in violation of this section. *Sullivan v. City Council*, 133 S. C. 156, 130 S. E. 872 (1925); *Sullivan v. City Council*, 133 S. C. 189, 130 S. E. 876, 133 S. E. 340 (1925). See also, *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897).

Registration is not required before each special election in municipalities.—It is evident from the provisions of this section that it is not the intention to require registration of the voters before each special election in municipalities. *Bray v. City Council*, 62 S. C. 57, 39 S. E. 810 (1901).

Waterworks construction without incurring debt in constitutional sense.—A town can construct a waterworks system, where no bonded indebtedness in the constitutional sense is involved, without submitting such project at an election called and held on a petition of a majority of the freeholders of the town. *Acker v. Cooley*, 177 S. C. 144, 181 S. E. 10 (1934).

For additional related cases, see *Dick v. Scarborough*, 73 S. C. 150, 53 S. E. 86 (1905); *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897); *Hunter v. Senn*, 61 S. C. 44, 39 S. E. 235 (1901).

Cited in *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898); *Ross v. Lipscomb*, 83 S. C. 136, 65 S. E. 451 (1909); *Wood v. Ross*, 85 S. C. 309, 67 S. E. 449 (1910); *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917); *Kalber v. Stokes*, 194 S. C. 339, 9 S. E. (2d) 785 (1940).

§ 14. Arrest of electors.

Electors shall in all cases except treason, felony, or a breach of the peace, be privileged from arrest on the days of election during their attendance at the polls, and going to and returning therefrom.

See Const. 1868, Art. VIII, § 6.

Cited in *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

§ 15. Right of suffrage free.

No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.

Names of all candidates need not be placed on same ballot.—It is not necessary to place the names of all candidates for the same office on the same ballot. *Gardner v. Blackwell*, 167 S. C. 313, 166 S. E. 338 (1932).

ARTICLE III.

LEGISLATIVE DEPARTMENT.

§ 1. Legislative power vested in two branches.

The legislative power of this State shall be vested in two distinct branches, the one to be styled the "Senate" and the other the "House of Representatives," and both together the "General Assembly of the State of South Carolina."

See Const. 1868, Art. II, § 1.

I. General Consideration.

II. Laws not in Violation of Section.

I. GENERAL CONSIDERATION.

Provisions of this Article are mandatory.—All the provisions of this Article which prescribe the procedure for enacting laws are mandatory. *Bramlette v. Stringer*, 186 S. C. 134, 195 S. E. 257 (1938).

Section confers legislative power upon General Assembly.—Under the provisions of this section, the General Assembly is vested with the entire legislative power of the State, subject only to such restrictions upon and regulations of such power as are contained in the Constitution. *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935).

This section confers the whole legislative power of the State in the making of laws and providing for their enforcement, not plenary, however, but subject to constitutional limitations. *Massey v. Glenn*, 106 S. C. 53, 90 S. E. 321 (1916).

The people in convention assembled clothed the General Assembly with the whole legislative power capable of being exercised within our borders, subject only to such restrictions upon and regulation of such power as are embraced in the State Constitution itself or that of the United States. *State v. Aiken*, 42 S. C. 222, 20 S. E. 221 (1894); *Mauldin v. City Council*, 42 S. C. 293, 20 S. E. 842 (1895).

Which body possesses all powers not reserved by State Constitution.—The people of the State vested the General Assembly with the entire legislative power of the State, subject only to such restrictions upon and regulations of such power as were contained in the Constitution itself. It is the theory and intent of the Constitution of

South Carolina that the powers vested in the General Assembly include all powers not specifically reserved by the Constitution. *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

State Constitution does not grant legislative power.—The Constitution of South Carolina is a limitation upon, rather than a grant of, legislative power. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

For additional related cases, as to legislative power distinguished from judicial power, see *Segars v. Parrott*, 54 S. C. 1, 31 S. C. 677, 865 (1898); as to power under former constitutions, see *State v. Williams*, 2 McC. (13 S. C. L.) 301.

Applied in *Clarendon County v. Sumter County*, 116 S. C. 258, 108 S. E. 103 (1921); *Utsey v. Charleston, S. & N. R. Co.*, 38 S. C. 399, 17 S. E. 141 (1893).

Cited in *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929); *McCullough v. Brown*, 41 S. C. 220, 19 S. E. 458 (1894); *Sloan v. Fair*, 172 S. C. 485, 174 S. E. 436 (1934).

II. LAWS NOT IN VIOLATION OF SECTION.

Adoption of Federal regulations in State income tax law.—The income tax law of 1922 [1922 (32) 896] is not a delegation of legislative power by possible attempt to adopt future Federal tax regulations. *Santee Mills v. Query*, 122 S. C. 158, 115 S. E. 202 (1922).

Authorizing county boards of education to alter school district lines.—The provision of this section is not infringed by Act of 1896, sec. 31, as amended in 1900, authorizing county boards of education to alter lines of school districts. Such legislation is not an attempt to delegate legislative

powers to the county boards of education but is an attempt merely to define their powers and duties, as authorized by § 11 providing that the General Assembly shall define the powers, duties, etc., of school officers, since there is a marked distinction between the imposition of a duty and the delegation of a legislative power. *Waterloo School District v. Cross Hill School District*, 106 S. C. 292, 91 S. E. 257 (1917).

Authorizing tax commission to regulate liquor distribution.—Section 4-7 of the Code, which authorizes the Tax Commission to adopt such regulations as it may deem necessary and proper to effect an equitable distribution of alcoholic liquors in the State, does not confer legislative power upon the commission and does not violate this section of the Constitution. *Davis v. Query*, 209 S. C. 41, 39 S. E. (2d) 117 (1946).

Creation of new highway commission.—Where it was contended that Act No. 831, 39 St. at Large, p. 1557, creating a new highway commission, violated this section in delegating to the members of the legislative delegations from the judicial circuits of the State the right to elect district highway commissioners, it was held that such contention was groundless. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Establishing chain gang in Fairfield County.—An act providing for establishing of chain gang in Fairfield County on unanimous written consent of legislative delegation from that county is not void as unconstitutional delegation of legislative power. *Ruff v. Boulware*, 133 S. C. 420, 131 S. E. 29 (1925).

Giving sinking fund commission power to approve bonds.—Power conferred upon a sinking fund commission, by an act authorizing city to construct a stadium, to approve bonds issued by the city was held not an unconstitutional delegation of legisla-

tive power. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Hairdresser and cosmetologist statutes.—Section 56-451 to 56-482, relating to regulations of hairdressers and cosmetologists, do not violate this section. *State v. Ross*, 185 S. C. 472, 194 S. E. 439 (1937).

(Editor's note—The above case was decided prior to the 1948 amendment to the cited Code sections.)

Housing authority powers given county legislative delegation.—Sections 36-181 and 36-182 of the Code do not violate this section by attempting to delegate legislative powers to the legislative delegation of the county. *Benjamin v. Housing Authority*, 198 S. C. 79, 15 S. E. (2d) 737 (1941).

Income tax law.—The State income tax law of 1922 [1922 (32) 896] is not an unconstitutional delegation of power to the State Tax Commission. *Santee Mills v. Query*, 122 S. C. 158, 115 S. E. 202 (1922).

Power of State Highway Commission to determine sufficiency of revenues.—Act No. 831 [1936 (39) 1557] contains no delegation of legislative authority repugnant to this section in its conferring upon the State Highway Commission the determination of the sufficiency of revenues. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Statutes providing for government of Charleston County.—Sections 14-1169 and 14-1191, authorizing the Charleston County council to make appropriations, levy taxes, incur indebtedness, issue bonds, exercise the power of eminent domain, supervise and regulate the various departments of the county, establish policies affecting the administrative employees of the county, and otherwise provide for the internal management of Charleston County, are not an unconstitutional delegation of legislative authority. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

§ 2. House of Representatives.

The House of Representatives shall be composed of members chosen by ballot every second year by citizens of this State, qualified as in this Constitution is provided.

See Const. 1868, Art. II, § 2.

§ 3. Number of members; enumeration of inhabitants.

The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each. Each County shall constitute one election district. An enumeration of the inhabitants for this purpose shall be made in the year Nineteen hundred and One, and shall be made in the

course of every tenth year thereafter, in such manner as shall be by law directed: *Provided*, That the General Assembly may at any time, in its discretion, adopt the immediately preceding United States Census as a true and correct enumeration of the inhabitants of the several Counties, and make the apportionment of Representatives among the several Counties according to said enumeration: *Provided, further*, That until the apportionment which shall be made upon the next enumeration shall take effect, the representation of the several Counties as they now exist (including the County of Saluda established by ordinance) shall be as follows: Abbeville, 5; Aiken, 3; Anderson, 5; Barnwell, 5; Beaufort, 4; Berkeley, 4; Charleston, 9; Chester, 3; Chesterfield, 2; Clarendon, 3; Colleton, 4; Darlington, 3; Edgefield, 3; Fairfield, 3; Florence, 3; Georgetown, 2; Greenville, 5; Hampton, 2; Horry, 2; Kershaw, 2; Lancaster, 2; Laurens, 3; Lexington, 2; Marion, 3; Marlboro, 3; Newberry, 3; Oconee, 2; Orangeburg, 5; Pickens, 2; Richland, 4; Saluda, 2; Spartanburg, 6; Sumter, 5; Union, 3; Williamsburg, 3; York, 4; *Provided further*, That in the event other Counties are hereafter established, then the General Assembly shall reapportion the Representatives between the Counties.

See Const. 1868, Art. II, §§ 3 and 4.

Stated in *Williams v. Benet*, 35 S. C. 150, 14 S. E. 311 (1892); *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903). Cited in *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947); *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

§ 4. Assignment of representatives.

In assigning Representatives to the several Counties, the General Assembly shall allow one Representative to every one hundred and twenty-fourth part of the whole number of inhabitants in the State: *Provided*, That if in the apportionment of Representatives any County shall appear not to be entitled, from its population, to a Representative, such County shall, nevertheless, send one Representative; and if there be still a deficiency in the number of Representatives required by Section third of this Article, such deficiency shall be supplied by assigning Representatives to those Counties having the largest surplus fractions. 

See Const. 1868, Art. II, § 6.

§ 5. When apportionment takes effect.

No apportionment of Representatives shall take effect until the general election which shall succeed such apportionment.

See Const. 1868, Art. II, § 7.

§ 6. Senate.

The Senate shall be composed of one member from each County, to be elected for the term of four years by the qualified electors in each County, in the same manner in which members of the House of Representatives are chosen. 

See Const. 1868, Art. II, § 8.

§ 7. Qualification of Senators and members of House.

No person shall be eligible to a seat in the Senate or House of Representatives who, at the time of his election, is not a duly qualified elector under this

Constitution in the County in which he may be chosen. Senators shall be at least twenty-five and Representatives at least twenty-one years of age.

See Const. 1868, Art. II, § 10.

§ 8. Election of Senators and representatives; classification of Senators.

The first election for members of the House of Representatives under this Constitution shall be held on Tuesday after the first Monday in November Eighteen hundred and Ninety-six, and in every second year thereafter, in such manner and at such places as the General Assembly may prescribe; and the first election for Senators shall be held on Tuesday after the first Monday in November Eighteen hundred and Ninety-six, and every fourth year thereafter, except in Counties in which there was an election for Senator in Eighteen hundred and Ninety-four for a full term, in which Counties no election for Senator shall be held until the general election to be held in Eighteen hundred and Ninety-eight, and every fourth year thereafter, except to fill vacancies. Senators shall be so classified that one-half of their number, as nearly as practicable, shall be chosen every two years. Whenever the General Assembly shall establish more than one County at any session, it shall so prescribe the first term of the Senators from such Counties as to observe such classification.

See Const. 1868, Art. II, §§ 9 and 11.

§ 9. Sessions of General Assembly.

The annual session of the General Assembly heretofore elected, fixed by the Constitution of the year Eighteen hundred and Sixty-eight to convene on the fourth Tuesday of November, in the year Eighteen hundred and ninety-five, is hereby postponed, and the same shall be convened and held in the city of Columbia on the second Tuesday of January, in the year Eighteen hundred and Ninety-six. The first session of the General Assembly elected under this Constitution shall convene in Columbia on the second Tuesday in January, in the year Eighteen hundred and Ninety-seven, and thereafter annually at the same time and place. Should the casualties of war or contagious disease render it unsafe to meet at the seat of government, then the Governor may, by proclamation, appoint a more secure and convenient place of meeting. Members of the General Assembly shall not receive any compensation for more than forty days of any one session: *Provided*, That this limitation shall not affect the first four sessions of the General Assembly under this Constitution.

See Const. 1868, Art. II, § 12.

Legislators do not receive an annual salary.—The four hundred dollars received by legislators for each session is a per diem of ten dollars and not an annual salary. Therefore, the sum of ten dollars a day should be paid to the legislators for a special session, plus mileage and postage, and not a flat sum of four hundred dollars. *Godfrey v. Hunter*, 176 S. C. 442, 180 S. E. 468 (1935).

But their expenses may be paid.—The General Assembly may provide for the payment of expenses of its members in per-

forming duties imposed upon them by statute. *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

Though not increased illegally.—An appropriations act which called for each member of the General Assembly to be paid seven hundred dollars as official expenses in connection with the 1947 session and work between sessions in addition to any other expense payments provided, and which also stated it to be unnecessary to itemize expenses, was held to be intended to increase the compensation or per diem of the mem-

bers of the General Assembly in violation of the Constitution. *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948). Applied in *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896).

§ 10. Terms of office.

The terms of office of the Senators and Representatives chosen at a general election shall begin on the Monday following such election.

See Const. 1868, Art. II, § 13.

§ 11. Election returns; quorum; absent members.

Each house shall judge of the election returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as may be provided by law or rule.

See Const. 1868, Art. II, § 14.

Courts cannot adjudicate contested Senate election.—The merits of a contested election case in the Senate cannot be taken from the constitutional tribunal and brought on for adjudication in a court of either law or equity. *Anderson v. Blackwell*, 168 S. C. 137, 167 S. E. 30 (1933).

Thus State Board of Canvassers is limited by section.—The power vested in the State Board of Canvassers to decide, as judicial officers, who in a given case has received the largest number of votes for the office of State Senator is subject to the power vested in the Senate by the Constitution to judge the election returns and qualifications of its own members. *Anderson v. Blackwell*, 168 S. C. 137, 167 S. E. 30 (1933).

Since Senate alone determines vacation of Senate office.—In a case brought to determine whether defendants had vacated their offices in the State Senate, as provided in S. C. Const., Art. 3, § 24, since they had

accepted other public offices, the court held that this was a matter wholly within the jurisdiction of the Senate as it concerned qualifications of members. *Culbertson v. Blatt*, 194 S. C. 105, 9 S. E. (2d) 218 (1940).

General Assembly lacks judicial powers.—The General Assembly did not by § 3 of the act of 9th March, 1896, intend to invest itself with judicial power. If it did, then that section of the act is clearly unconstitutional, null, and void. That the framers of the Constitution never intended the General Assembly to exercise judicial powers is shown by this section. *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898).

Applied in *Williams v. Benet*, 35 S. C. 150, 14 S. E. 311 (1892); *Ex parte Scarborough*, 34 S. C. 13, 12 S. E. 666 (1891).

Quoted in *Grimball v. Beattie*, 174 S. C. 422, 177 S. E. 668 (1934).

Cited in *Kalber v. Redfearn*, 215 S. C. 224, 54 S. E. (2d) 791 (1949).

§ 12. Officers; rules; punishment and expulsion of members.

Each house shall choose its own officers, determine its rules of procedure, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

See Const. 1868, Art. II, § 15.

Section is construed with S. C. Const., Art. 4, § 23.—S. C. Constitution, Art. 4, § 23 must be considered in conjunction with the provisions of this section. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Power to make rules is continuous.—The power to make rules is not one that is exhausted when once exercised. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, is absolute and beyond the challenge of any other body or tribunal.

State v. Lewis, 181 S. C. 10, 186 S. E. 625 (1936).

Neither house may by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of procedure established by the rule and the result which is sought to be obtained. Within these limitations, all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be

better, more accurate, and even more just. *Applied in Thompson v. Livingston*, 116 State v. Lewis, 181 S. C. 10, 186 S. E. 625 S. C. 412, 107 S. E. 581 (1921). (1936).

§ 13. Punishment of persons not members.

Each house may punish by imprisonment during its sitting any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence, or who, during the time of its sitting, shall threaten harm to the body or estate of any member for anything said or done in either house, or who shall assault any of them therefor, or who shall assault or arrest any witness or other person ordered to attend the house in his going thereto or returning therefrom, or who shall rescue any person arrested by order of the house: *Provided*, That such time of imprisonment shall not in any case extend beyond the session of the General Assembly.

See Const. 1868, Art. II, § 16.

Legislative committee may imprison witness for contempt.—An act authorizing a legislative committee to summon and examine witnesses, and empowering such committee to punish by imprisonment for refusal to appear or testify, cannot be said to be a violation of this section in that it provides for greater punishment by the committee than it is within the power of

the legislature itself to impose under that section, since it cannot be assumed that a committee of a co-ordinate department will perform an unconstitutional act. *Robertson v. Peebles*, 120 S. C. 176, 115 S. E. 300 (1919).

Cited in State v. Quinn, 111 S. C. 174, 97 S. E. 62 (1918).

§ 14. Members in attendance protected.

The members of both houses shall be protected in their persons and estates during their attendance on, going to and returning from the General Assembly, and ten days previous to the sitting and ten days after the adjournment thereof. But these privileges shall not protect any member who shall be charged with treason, felony or breach of the peace.

See Const. 1868, Art. II, § 17.

Court may not order legislator to pay note during session.—A court order entered during a session of the General Assembly, requiring a legislator to pay a certain amount on his note, was held in contraven-

tion of this section. *Bomar v. Gantt*, 167 S. C. 139, 166 S. E. 90 (1932).

Stated in Worth v. Norton, 56 S. C. 56, 33 S. E. 792 (1899).

§ 15. Bills for revenue; other bills.

Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; all other Bills may originate in either house, and may be amended, altered or rejected by the other.

See Const. 1868, Art. II, § 18.

Penalty provisions do not make act revenue measure.—An act regulating trapping, shipping, and transportation of furs, and providing fines for violation thereof, is not a revenue measure and thus is not invalid under this section because it did not originate in the house of representatives. *State v. Stanley*, 131 S. C. 513, 127 S. E. 574 (1925); *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929).

Impeachment of act by journals of either

house.—When an act has been signed by the president of the Senate and the speaker of the house of representatives, approved by the Governor, and filed in the office of the Secretary of State with the great seal of the State affixed, it cannot be impeached by the journals of either house or by other extrinsic evidence as respects matters pertaining to its history. *Wingfield v. South Carolina Tax Comm.*, 147 S. C. 116, 144 S. E. 846 (1928).

Valid motor vehicle license fee.—As to former motor vehicle license fee not in violation of this section of the Constitution, see § 3 of Act No. 831, 1936 Acts [1936 (39) 1557]. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Applied in *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929); *Crouch v. Benet*, 198 S. C. 185, 17 S. E. (2d) 320 (1941).

Cited in *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916); *Pineland Club v. Berg*, 110 S. C. 505, 96 S. E. 915 (1918); *Cantini v. Tillman*, 54 F. 969 (1893).

§ 16. Style of laws.

The style of all laws shall be: "Be it enacted by the General Assembly of the State of South Carolina."

See Const. 1868, Art. II, § 19.

This section is mandatory. *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903).

Joint resolution in compliance with section.—A joint resolution enacted by the words, "Be it resolved," etc., is a sufficient compliance with the mandatory provision of

this section. *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903).

Cited in *Southern Ry. Co. v. Kay*, 62 S. C. 28, 39 S. E. 785 (1901); *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916).

§ 17. One subject.

Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

See Const. 1868, Art. II, § 20.

I. General Consideration.

II. Title of Act.

III. Application of Section.

A. Acts Held Constitutional.

B. Acts Held Unconstitutional.

I. GENERAL CONSIDERATION.

This section does not apply to municipal ordinances.—*State v. Gibbes*, 60 S. C. 500, 39 S. E. 1 (1901).

Or to joint resolutions proposing constitutional amendments.—Joint resolutions, proposing amendments to the Constitution of this State and agreed to by two thirds of the members elected to each house, do not fall within the purview of this section. *Kalber v. Redfearn*, 215 S. C. 224, 54 S. E. (2d) 791 (1949).

Section secures insertion of matters germane to subject.—The purpose of this section is to prevent insertion of matters not germane to the general subject. *Furman v. Willimon*, 106 S. C. 159, 90 S. E. 700 (1916).

The object of this constitutional provision is to prevent deception of the public. If the general subject of the legislation is expressed in the title of an act, the details, the means, the methods, or the instrumentalities by which the object is to be attained need not be indicated, provided they are germane to the general subject of the legislation. *Miles Laboratories v. Scignious*, 30 F. Supp. 549 (1939).

And prevents surreptitious legislation.—*Furman v. Willimon*, 106 S. C. 159, 90 S. E. 700 (1916).

Or legislation by surprise or fraud.—The purpose of this provision is to prevent hodgepodge or log-rolling legislation; to prevent surprise or fraud upon the legislature by means of provisions in bills of which the title gave no intimation and which might, therefore, be overlooked and carelessly and unintentionally adopted; and fairly to appraise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered in order that they may have opportunity of being heard thereon by petition or otherwise if they shall so desire. *Charleston v. Oliver*, 16 S. C. 47 (1881); *State v. Fields*, 68 S. C. 148, 46 S. E. 771 (1904); *Southern Power Co. v. Walker*, 89 S. C. 84, 71 S. E. 356 (1911); *Stewart v. Woodmen of the World Life Ins. Soc.*, 195 S. C. 365, 11 S. E. (2d) 449 (1940); *O'Shields v. Caldwell*, 207 S. C. 194, 35 S. E. (2d) 184 (1945); *McCollum v. Snipes*, 213 S. C. 254, 49 S. E. (2d) 12 (1948).

It does not affect permanency of State laws.—The limitation of this section in no way impinges upon the permanency of the laws of the State. *Crouch v. Benet*, 198 S. C. 185, 17 S. E. (2d) 320 (1941).

And is a wise provision.—This section no doubt contains a wise provision which, if properly observed, would tend greatly to prevent confusion and doubt as to the exact meaning and intent of legislative enactments. To this end it should be enforced by the courts in all proper cases, due care being exercised lest too strict a construc-

tion defeat its very object and purpose by clogging legislation and loading down our statute books with numberless separate acts wholly unnecessary to the end desired. *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14 (1888).

Which should be liberally construed.—There has been a general disposition to construe this section liberally rather than to embarrass legislation by a construction the strictness of which is unnecessary to the accomplishment of the beneficial purpose for which it has been adopted. *Southern Power Co. v. Walker*, 89 S. C. 84, 71 S. E. 356 (1911); *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14 (1888); *Hill v. City Council*, 59 S. C. 396, 38 S. E. 11 (1901); *McKiever v. Sumter*, 137 S. C. 266, 135 S. E. 60 (1926).

This section of the Constitution has been generally construed with great liberality. *Gasque v. Nates*, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

The law is well established in this State that this section of the Constitution, which provides that no law shall embrace more than one subject which shall be expressed in title, should be liberally construed so as to uphold the act if practicable. *McCollum v. Snipes*, 213 S. C. 254, 49 S. E. (2d) 12 (1948).

In *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915), the court held that in view of the purpose of this provision of the Constitution, it should have a liberal construction so as not to defeat or embarrass legislation by compelling separate enactments on every phase of a general subject of legislation or with regard to every matter incident thereto or promotive thereof. *Chesterfield County v. State Highway Dept.*, 191 S. C. 19, 3 S. E. (2d) 686 (1939).

This section of the Constitution must, of course, be liberally construed in the light of its purpose, which is really to prevent fraud on the legislature by hodgepodge or log-rolling methods. It certainly should not be so construed as to defeat the legislative will merely because the language of the act might have more clearly shown the connection between its various articles and sections. *Arthur v. Johnston*, 185 S. C. 324, 194 S. E. 151 (1937); *Crouch v. Benet*, 198 S. C. 185, 17 S. E. (2d) 320 (1941).

Considering substance rather than form.—The restriction requiring the subject of an act to be expressed in its title should be reasonably construed, considering substance rather than form, to require the expression in the title of the general object but not the details, incidents, or means of effecting the object. It should include the

subject and not the purpose of the act and the reasons which brought about the enactment of it by the legislature. *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691 (1929); *Plowden v. Beattie*, 185 S. C. 229, 193 S. E. 651 (1937).

And should not be narrowly or technically enforced.—This constitutional requirement should not be enforced in any narrow or technical spirit. It was introduced to prevent certain abuses, and it should be reasonably and liberally construed on the one hand so as to guard against these abuses, and on the other hand so as not to embarrass or obstruct needed legislation. *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691 (1929); *Freeman v. Holliday*, 165 S. C. 408, 164 S. E. 20 (1932).

Unless title of act specifically limits its object.—While this section is very liberally construed, yet when the title of an act definitely and specifically limits its object, the court must limit the operation of the act to the subject so expressed in the title. *State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913).

A statute should be upheld if possible, doubtful cases being resolved in its favor. *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691 (1929).

Unless it plainly conflicts with the Constitution.—To justify a court in declaring a statute in violation of the constitutional inhibition, the objection must be serious and the conflict between the statute and the Constitution plain and unmistakable. *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691 (1929).

The objection should be grave and the conflict between the statute and the Constitution palpable before the judiciary should disregard a legislative enactment upon the ground that it embraces more than one subject or object, or, if it embraces but one subject or object, that it is not sufficiently expressed by the title. Where, after having applied the general principles governing the construction of constitutional provisions, a court is still in doubt as to the constitutionality of an act, it should sustain the same. *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691 (1929).

Applied in *State v. Bradley*, 109 S. C. 411, 96 S. E. 142 (1918); *State v. Glover*, 91 S. C. 562, 75 S. E. 218 (1912); *McKerral v. Road, etc., Comm.*, 91 S. C. 450, 74 S. E. 981 (1912); *Verner v. Muller*, 89 S. C. 117, 71 S. E. 654 (1911); *State v. Fant*, 88 S. C. 493, 70 S. E. 1027 (1911); *State v. Burley*, 80 S. C. 127, 61 S. E. 255 (1908); *State v. Hunter*, 79 S. C. 91, 60 S. E. 226 (1908); *Parks v. Laurens Cotton*

Mills, 75 S. C. 560, 56 S. E. 234 (1907); Riley v. Charleston Union Station Co., 71 S. C. 457, 51 S. E. 485 (1905); Wingfield v. South Carolina Tax Comm., 147 S. C. 116, 144 S. E. 846 (1928); Blair v. Morgan, 59 S. C. 52, 37 S. E. 45 (1900); State v. Port Royal & A. Ry. Co., 45 S. C. 413, 23 S. E. 363 (1895); Malcomson v. Wappoo Mills, 86 F. 192 (1898); State v. Crosby, 51 S. C. 247, 28 S. E. 529 (1898); Smith v. Ashmore, 184 S. C. 316, 192 S. E. 565 (1937); Gaud v. Walker, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Cited in Hall v. Richards, 159 S. C. 34, 156 S. E. 12 (1930); Chapman v. Greenville Chamber of Commerce, 127 S. C. 173, 120 S. E. 584 (1923); Sandel v. State, 126 S. C. 1, 119 S. E. 776 (1923); Walker v. Glenn, 124 S. C. 501, 117 S. E. 723 (1923); State v. Charleston Bridge Co., 113 S. C. 116, 101 S. E. 657 (1919); State v. Glover, 91 S. C. 562, 75 S. E. 218 (1912); State v. Hertzog, 92 S. C. 14, 75 S. E. 374 (1912); Union v. Board of Com'rs., 91 S. C. 248, 74 S. E. 496 (1912); Lyon v. Patterson, 102 S. C. 525, 87 S. E. 306 (1915); Epperson v. Jackson, 83 S. C. 157, 65 S. E. 217 (1909); Ross v. Lipscomb, 83 S. C. 136, 65 S. E. 451 (1909); Park v. Southern Ry. Co., 78 S. C. 302, 58 S. E. 931 (1907); Hopkins v. Clemson Agricultural College, 77 S. C. 12, 57 S. E. 551 (1907); State v. Jennings, 68 S. C. 411, 47 S. E. 683 (1904); Riley v. Charleston Union Station Co., 67 S. C. 84, 45 S. E. 149 (1903); Congaree Const. Co. v. Columbia, 49 S. C. 535, 27 S. E. 570 (1897); Coleman v. Broad River, 50 S. C. 321, 27 S. E. 774 (1897); Paris Mountain Water Co. v. Greenville, 105 S. C. 180, 89 S. E. 669 (1916); Rivers v. McIntire, 160 S. C. 462, 158 S. E. 816 (1931); Ex parte Sanders, 168 S. C. 323, 167 S. E. 154 (1932); Webster v. Williams, 183 S. C. 368, 191 S. E. 51 (1937); Boggs v. O'Dell, 190 S. C. 442, 3 S. E. (2d) 486 (1939); Kalber v. Redfearn, 215 S. C. 224, 54 S. E. (2d) 791 (1949).

II. TITLE OF ACT.

"Subject" means the thing legislated about or the matter or matters upon which the legislature operates to accomplish a definite object or objects reasonably related one to the other. Poulnot v. Cantwell, 129 S. C. 171, 123 S. E. 651 (1924); Arthur v. Johnston, 185 S. C. 324, 194 S. E. 151 (1937); Crouch v. Benet, 198 S. C. 185, 17 S. E. (2d) 320 (1941).

An act is within this section when its provisions are germane to the title. Bartsdale v. Laurens, 58 S. C. 413, 36 S. E. 661

(1900); Fleming v. Royall, 145 S. C. 438, 143 S. E. 162 (1928).

Or where it provides means for accomplishing its general purpose.—This section is complied with if the title expresses a general subject and if the body of an act provides means, methods, or instrumentalities intended to facilitate accomplishment of the general purpose. McKiever v. Sumter, 137 S. C. 266, 135 S. E. 60 (1926).

This constitutional mandate is complied with where the title of an act states the general subject of legislation and the provisions in the body of the act are germane thereto as a means to accomplish the object expressed in the title. The title need not be an index of the contents of the statute. Verner v. Muller, 89 S. C. 117, 71 S. E. 654 (1911); Clarke v. South Carolina Public Service Authority, 177 S. C. 427, 181 S. E. 481 (1935); State v. Lewis, 181 S. C. 10, 186 S. E. 625 (1936); Plowden v. Beattie, 185 S. C. 229, 193 S. E. 651 (1937); Arthur v. Johnston, 185 S. C. 324, 194 S. E. 151 (1937); Gasque v. Nates, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

This section is complied with if the title expresses a general subject and if the body of the act provides the means, methods, or instrumentalities intended to facilitate accomplishment of the general purpose. The title of the act need not specifically refer to previous statutes which are to be amended to satisfy constitutional requirements that subject of statute shall be expressed in the title. McCollum v. Snipes, 213 S. C. 254, 49 S. E. (2d) 12 (1948).

Since topics in act should relate to its title.—The topics in the body of an act should be kindred in nature to, and have a legitimate and natural association with, the subject of its title. If the provisions of the act itself cannot be fairly construed as embraced within its title, then the act is in conflict with the Constitution. Douglass v. Watson, 186 S. C. 34, 195 S. E. 116 (1938).

Title need not be index to act's contents.—It is not necessary that the title to an act should be an index of the contents of the statute under this section. State v. Moorer, 152 S. C. 455, 150 S. E. 269 (1929); Crawford v. Johnston, 177 S. C. 399, 181 S. E. 476 (1935); Clarke v. South Carolina Public Service Authority, 177 S. C. 427, 181 S. E. 481 (1935); State v. Lewis, 181 S. C. 10, 186 S. E. 625 (1936); Gasque v. Nates, 191 S. C. 271, 2 S. E. (2d) 36 (1939).

And it may be general.—The generality of a title is no objection to it, as long as it is not made a cover to legislation, incongruous in itself, which by no fair intend-

ment can be considered as having a necessary or proper connection. *Southern Power Co. v. Walker*, 89 S. C. 84, 71 S. E. 356 (1911); *Arthur v. Johnston*, 185 S. C. 324, 194 S. E. 151 (1937).

But must indicate subject of proposed legislation.—The title should not contain all the provisions of the act, but, under this section, it must indicate the subject of the proposed legislation. *Robinson v. Columbia*, 116 S. C. 193, 107 S. E. 476 (1921).

Title expressing object also embraces means of achieving object.—When an act of the legislature expresses in its title the object of the act, the title embraces and expresses any lawful means to achieve the object, thus fulfilling the constitutional injunction that every law shall embrace but one subject which shall be expressed in its title. *Southern Power Co. v. Walker*, 89 S. C. 84, 71 S. E. 356 (1911); *Means v. State Highway Dept.*, 146 S. C. 19, 143 S. E. 360 (1928); *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14 (1888).

Surplusage in a title does not render act void. *Doyle v. King*, 211 S. C. 247, 44 S. E. (2d) 608 (1947).

As does omission of words by clerical error.—Word omitted from title by clerical error cannot be supplied to make the title conform to the body of the act as required by this section. *Robinson v. Columbia*, 116 S. C. 193, 107 S. E. 476 (1921).

Act may treat several branches of one subject.—Several branches of one general subject may be dealt with in a single act. *DeLoach v. Scheper*, 188 S. C. 21, 198 S. E. 409 (1938); *McCollum v. Snipes*, 213 S. C. 254, 49 S. E. (2d) 12 (1948).

Section 58-594, providing penalty for failure of carrier to adjust loss or damage to freight in limited time, relates to two phases of same general subject, and hence does not violate this section. *Aycock-Little Co. v. Southern Ry.*, 76 S. C. 331, 57 S. E. 27 (1907).

Details of accomplishing purpose of act may appear in its body.—When the general subject of an act is stated in its title, any details of legislation which provides the means, methods, or instrumentalities intended to facilitate accomplishment of its general purpose, and which are germane to the act, may be embraced in the body thereof without violating this section. *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929); *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935); *Chesterfield County v. State Highway Dept.*, 191 S. C. 19, 3 S. E. (2d) 686 (1939); *Crouch v. Benet*, 198 S. C. 185, 17 S. E. (2d) 320

(1941); *Ward v. Cobb*, 204 S. C. 275, 28 S. E. (2d) 850 (1944).

Operation of act with title broader than its body.—Where the title of an act is broader than its body, the operation of the act is limited to matters embraced both in the title and in the body of the act, provided always that the title is not so deceptive or misleading as to render the entire statute void. *Doyle v. King*, 211 S. C. 247, 44 S. E. (2d) 608 (1947).

Joint resolution with one subject may amend two different sections.—The fact that a joint resolution relating to but one subject, viz., issuance of township bonds, amended two different sections of the Constitution is not material in view of the fact that the two sections amended related to the same subject. *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928).

III. APPLICATION OF SECTION.

A. Acts Held Constitutional.

Act authorizing bond issue for school construction.—An act authorizing the sale of additional coupon bonds for erection of a high school building in Anderson County does not violate this section. *Brownlee v. Brock*, 107 S. C. 230, 92 S. E. 477 (1917).

Act authorizing bond issue to cover indebtedness of school districts does not violate this section. *Shelor v. Pace*, 151 S. C. 99, 148 S. E. 726 (1929).

Act authorizing bond issue to pay bonded debt.—An act authorizing the city of Charleston to issue bonds to pay maturing bonded debt does not violate this section. *Buist v. City Council*, 77 S. C. 260, 57 S. E. 862 (1907).

Act authorizing bonds for highway improvements.—An act to authorize the county of Marion to issue bonds for permanent road and highway improvements does not violate this section. *Johnson v. Road, etc., Comm.*, 97 S. C. 205, 81 S. E. 502 (1913).

Act authorizing cities to sell light and ice plants does not violate this section. *McKiever v. Sumter*, 137 S. C. 266, 135 S. E. 60 (1926).

Act authorizing Insurance Commissioner to review rates.—An act authorizing the Insurance Commissioner to review rates is not unconstitutional under this section. *Henderson v. McMaster*, 104 S. C. 268, 88 S. E. 645 (1916).

Act authorizing stock and bond issue by sinking fund commission.—An act authorizing a new issue of bonds and stocks by State sinking fund commission does not violate this section. *State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913).

Act authorizing suit against State for negligent vaccination.—An act authorizing a suit against the State for inoculation of children with alleged impure vaccine does not violate this section. *Sandel v. State*, 115 S. C. 168, 104 S. E. 567 (1920).

Act consolidating five existing school districts does not violate this section. *Walker v. Bennett*, 125 S. C. 389, 118 S. E. 779 (1923).

Act creating highway commission.—Act authorizing county bond issue and creation of highway commission is not invalid. *Graham v. Ervin*, 144 S. C. 419, 103 S. E. 750 (1920).

Act establishing Spartanburg metropolitan district does not violate this section. *Alley v. Daniel*, 153 S. C. 217, 150 S. E. 691 (1929).

Act giving right of action for wrongful death of illegitimate child to the mother does not violate this section. *Croft v. Southern Cotton Oil Co.*, 83 S. C. 232, 65 S. E. 216 (1909).

Act locating sections of State highway.—A statute entitled "An act to establish the location of sections of State Highway No. 2 in Greenville and Pickens Counties" does not violate this section. *Means v. State Highway Dept.*, 146 S. C. 19, 143 S. E. 360 (1928).

Act prohibiting combinations of insurers.—An act prohibiting combinations of insurers and providing a penalty does not violate this section. *Henderson v. McMaster*, 104 S. C. 268, 88 S. E. 645 (1916).

Act prohibiting manufacture of liquor in State.—An act to prohibit the manufacture and sale of intoxicating liquors as a beverage within this State does not violate this section. *Cantini v. Tillman*, 54 F. 969 (1893).

Act providing for audit of county offices does not violate this section. *Spartanburg County v. Miller*, 135 S. C. 348, 132 S. E. 673 (1924).

Act providing for financing highway construction.—An act establishing alternative State or district unit plan for financing highway construction does not violate this section. *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929).

Act providing for forgery and offenses against the currency does not violate this section. *State v. Murray*, 72 S. C. 508, 52 S. E. 189 (1905).

Act providing for permit to import liquor.—An act providing for permit from judge of probate to import liquor and penalty for violations does not violate this section. *Bradford v. Richardson*, 111 S. C. 205, 97 S. E. 58 (1918).

Act punishing rape.—An act to prescribe the punishment for rape and assault with intent to ravish does not violate this section. *State v. Butler*, 85 S. C. 45, 66 S. E. 1041 (1910).

Act punishing safe-crackers.—An act to provide punishment for safe-crackers does not violate this section. *State v. O'Day*, 74 S. C. 448, 54 S. E. 607 (1906).

Act ratifying proceedings of school trustees.—An act to validate, ratify, and confirm all proceedings of the trustees of a school district relating to a bond issue does not violate this section. *Dove v. Kirkland*, 92 S. C. 313, 75 S. E. 503 (1912).

Act regulating billiard and pocket billiard rooms does not violate this section. *Fowler v. Anderson*, 131 S. C. 473, 128 S. E. 410 (1925).

Act regulating claims for freight damages.—An act to regulate the manner in which common carriers doing business in the State shall adjust freight rates and claims for loss or damage to freight does not violate this section. *McTeer v. Southern Express Co.* (S. C.) 58 S. E. 930 (1907).

Act regulating size and weight of trucks.—In *State v. Nutt Co.*, 180 S. C. 19, 185 S. E. 25 (1935), an act regulating the size and weight of trucks was held not to violate this section of the Constitution.

Act regulating trapping does not violate this section. *State v. Stanley*, 131 S. C. 513, 127 S. E. 574 (1925).

Act relating to damages from defective highways does not violate this section. *Scott v. Brookland*, 139 S. C. 321, 138 S. E. 32 (1927); *Drafts v. State Highway Dept.*, 142 S. C. 202, 140 S. E. 468 (1927).

Act relating to distribution of intestate estates.—An act entitled an act to amend a provision of the Code "relating to the distribution of intestate estates, so as to further provide for the distribution of such estates", which provided that if the intestate should leave no widow, lineal descendant, brother, sister, or parent, then his estate would descend equally to his uncles and aunts, the children of a deceased uncle or aunt to take their share, was held not a violation of this provision. *McCollum v. Snipes*, 213 S. C. 254, 49 S. E. (2d) 12 (1948).

Act relating to medical practice which includes chiropractors.—Title of act relating to practice of medicine is sufficient to include chiropractors. *State v. Barnes*, 119 S. C. 213, 112 S. E. 62 (1922).

Act relating to notification of terminated suspension of death sentence.—An act requiring the Supreme Court clerk to notify the penitentiary superintendent of the dismissal

of an appeal suspending the execution of a death sentence was held not unconstitutional as embracing a subject not expressed in its title. *Ex parte Howell*, 168 S. C. 197, 167 S. E. 230 (1932).

Act relating to selection, drawing, and summoning of juries in circuit courts does not violate this section of the Constitution. *State v. Franklin*, 80 S. C. 332, 60 S. E. 953 (1908), affirmed in 218 U. S. 161, 30 S. Ct. 640, 54 L. Ed. 980 (1910).

Act respecting school elections in Spartanburg County does not violate this section. *Becknell v. Waters*, 156 S. C. 77, 152 S. E. 816 (1930).

Act to amend an act to establish Anderson school district does not violate this section. *Burris v. Brock*, 95 S. C. 104, 79 S. E. 193 (1913).

Act to regulate motor vehicles.—An act to regulate further the running of motor vehicles in this State does not violate this section. *Merchants', etc., Bank v. Brigman*, 106 S. C. 362, 91 S. E. 332 (1917).

Appropriation act of 1941.—An objection to the general appropriation act of 1941 that three subjects were expressed in its title could not be sustained for the reason that the matters expressed were closely allied and related, having one subject, the fiscal affairs of the State, and thus satisfied the requirements of this section. *Crouch v. Benet*, 198 S. C. 185, 17 S. E. (2d) 320 (1941).

Appropriations act providing bonds for county purposes.—An annual appropriations act of a county may contain provisions for the issuance of bonds for county or subdivisional purposes, a related object which comes within the subject of the act when properly included in the title. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

Fair Trade Statute.—Sections 66-91 to 66-95 of the Code, constituting the Fair Trade Act, do not violate this section of the Constitution. *Miles Laboratories v. Seignious*, 30 F. Supp. 549 (1939).

Joint resolution as to validation of consols by State.—A joint resolution, approved March 22, 1878, is sufficient to embrace subsequent validation of consols issued by former officers of the State after their terms of office had expired. *State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913).

Joint resolution for construction and operation of ferry and vehicular communication does not violate this section. *Poulnot v. Cantwell*, 129 S. C. 171, 123 S. E. 651 (1924).

Joint resolution to amend S. C. Const., Art. 10, §§ 5 and 6, does not violate this section. *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928).

Pay-As-You-Go Act.—Provisions of the Pay-as-You-Go Act [1924 (33) 1193], relating to levying a gasoline tax and an automobile tax by including such powers in the words "and to provide funds", do not violate this section. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926).

Statutes creating county board of health.—Sections 32-451 to 32-469, creating a board of health for York County, do not violate this section of the Constitution. *Ward v. Cobb*, 204 S. C. 275, 28 S. E. (2d) 850 (1944).

Statute providing for equitable distribution of liquors.—The title of the Alcoholic Beverage Control Act of 1945, now §§ 4-1 et seq. of the Code, is sufficiently broad to allow regulations of the commission providing for the equitable distribution of liquors in the State. *Davis v. Query*, 209 S. C. 41, 39 S. E. (2d) 117 (1946).

Statute relating to collection and payment of checks by banks.—In *Witt v. Peoples State Bank*, 166 S. C. 1, 164 S. E. 306 (1932), § 8-181 of the code, relating to the collection and payment by banks of checks and other instruments for the payment of money, was held not to violate this section of the Constitution.

Statute relative to bond issues for State institutions.—A statute [1934 (38) 2269] entitled "An act to authorize the Governor and State Treasurer to issue bonds of the State for various State institutions, and to pledge certain revenues for the payment of such bonds," which related to the issuance of bonds for the benefit of specified State institutions was held not invalid as containing subject matter not expressed in its title. *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935).

Statutes transferring officers from fee to salary compensation.—There is no multiplicity of subjects, and therefore no violation of this section of the Constitution, in §§ 14-3481 to 14-3484, since the transfer of the county officers from the former fee basis of compensation, the vesting of the fees in the county, and the provision for annual salaries to be appropriated in lieu thereof in the subsequent county supply acts are all related so as to make a proper single subject. *O'Shields v. Caldwell*, 207 S. C. 194, 35 S. E. (2d) 184 (1945).

Statutes authorizing hydroelectric and navigation project.—Sections 59-1 to 59-35, 59-51 to 59-73, and 59-81 to 59-84, creating the South Carolina Public Service Authority and authorizing the construction of a hydroelectric and navigation project by such Authority, were held not to violate this constitutional requirement. *Clarke v.*

South Carolina Public Service Authority, 177 S. C. 427, 181 S. E. 481 (1935).

Supply bill for Beaufort County.—The Beaufort County supply bill for 1938-1939 related to only one subject and was not in violation of this constitutional provision. *DeLoach v. Scheper*, 188 S. C. 21, 198 S. E. 409 (1938).

B. Acts Held Unconstitutional.

Act authorizing domestic banks to forward drafts to drawee banks in other cities was held unconstitutional as being broader than its title. *Ex parte Wachovia Bank and Trust Co.*, 160 S. C. 104, 158 S. E. 214 (1931).

Act providing for collection of delinquent taxes.—In *Douglass v. Watson*, 186 S. C. 34, 195 S. E. 116 (1938), the court held that an act, part of the title of which was "An act to provide for the collection of delinquent taxes in Chesterfield County in five

annual installments", was obnoxious to this section of the Constitution.

Act relating to cities having commission form of government is unconstitutional for failure to express subject in title. *Floyd v. Bennett*, 124 S. C. 483, 117 S. E. 722 (1923).

Act relating to redemption of consols.—An act, as far as it authorizes the redemption of Brown Consols in addition to Redemption Brown Consols, violates this section. *State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913).

Act to punish abortion was held unconstitutional in part for violation of this section. *State v. Fields*, 68 S. C. 148, 46 S. E. 771 (1904).

Amendatory act making special act general is unconstitutional for failure of title to conform to body of act. *Robinson v. Columbia*, 116 S. C. 193, 107 S. E. 476 (1921).

§ 18. Formalities of act.

No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: *Provided*, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

See Const. 1868, Art. II, § 21.

"Reading" contemplated is reading of bill as drafted.—*Santee Mills v. Query*, 122 S. C. 158, 115 S. E. 202 (1922).

Yea and nay vote need not be taken on each reading.—Under this section it is unnecessary for a yea and nay vote to be taken and entered on the journal upon the first readings of a joint resolution proposing a constitutional amendment and a bill ratifying the amendment, notwithstanding S. C. Const., Art. 16, § 1, there being no requirement under such constitutional provision that the yea and nay vote be taken on each reading, and it being sufficient if the two-thirds vote required be taken after the second reading. *Thompson v. Livingston*, 116 S. C. 412, 107 S. E. 581 (1921).

Failure of journal to show that no nay votes were cast on second reading of joint resolution is not fatal. *Thompson v. Livingston*, 116 S. C. 412, 107 S. E. 581 (1921).

Act is conclusively presumed to be properly enacted.—When an act has been enrolled and signed by the President of the Senate and the Speaker of the House, its terms can be ascertained only by an inspection of the enrolled act, and evidence from the journal of the House and of the Senate is not competent for this purpose.

The court conclusively presumes that the act has been properly passed. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Extrinsic evidence is incompetent to impeach act.—Where act was duly signed by presiding officers of the General Assembly, approved by Governor of State, and duly enrolled in the office of the Secretary of State, evidence outside the act itself to show that the act had not received three readings in each of the houses on three several days as required by this section and that the act, though a revenue measure, had not originated in the House of Representatives as required by S. C. Const., Art. 3, § 15, and that it was improperly amended during its passage, was incompetent to impeach such act. *State v. Mooror*, 152 S. C. 455, 150 S. E. 269 (1929).

Income tax law is not unconstitutional because passed without required readings.—*Santee Mills v. Query*, 122 S. C. 158, 115 S. E. 202 (1922).

Act regulating size and weight of trucks.—See note to S. C. Const., Art. 3, § 17.

Applied in *Wingfield v. South Carolina Tax Comm.*, 147 S. C. 116, 144 S. E. 846 (1928).

Cited in *Jackson v. Breeland*, 103 S. C.

184, 88 S. E. 128 (1916); *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916); *Cantini v. Tillman*, 54 F. 969 (1893); *Parrott v. Gourdin*, 205 S. C. 364, 32 S. E. (2d) 14 (1944).

§ 19. Mileage; increase of per diem; compensation during extra session.

Each member of the General Assembly shall receive five cents for every mile for the ordinary route of travel in going to and returning from the place where its sessions are held; no General Assembly shall have the power to increase the per diem of its own members; and members of the General Assembly when convened in extra session shall receive the same compensation as is fixed by law for the regular session.

See Const. 1868, Art. II, § 23.

Purpose of section.—The evident purpose of the provision in the State Constitution that the General Assembly shall not increase the per diem of its own members during their term of office was to prevent the General Assembly from fixing a compensation for themselves different from that provided by law when they offered themselves as candidates for the General Assembly. *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

Compensation may be fixed for incoming Assembly.—There is no prohibition in the Constitution against legislators providing adequate compensation for the members of each house of an incoming General Assembly. The only prohibition is against voting themselves additional compensation during their terms as members of that body. *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

"Per diem" means pay for day's services.—Generally, the term "per diem," as used in connection with compensation, wages, or salary, means pay for a day's services, and it clearly refers to the compensation provided for in S. C. Const., Art. 3, § 9. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

And "compensation" does not include expense allowance.—The word "compensation", as used in S. C. Const., Art. 3, § 9, has reference only to payment for services rendered, and does not include an allowance for expenses. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

Legislators do not receive an annual salary.—See note to S. C. Const., Art. 3, § 9.

But their expenses may be appropriated by act.—An act providing for appropriation of money for official expenses of members of the legislature is constitutional. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

For duties imposed by statute.—The General Assembly may provide for the payment of expenses of its members in performing duties imposed upon them by statute.

Scroggie v. Bates, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

Where no increase in compensation is effected.—If it should be found that the effect of an appropriation was to increase the compensation of members of the General Assembly, such appropriation would be unconstitutional. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

An appropriations act, which called for each member of the General Assembly to be paid \$700 for official expenses in connection with the 1947 session and work between sessions in addition to any other expense payments provided, and which also stated it to be unnecessary to itemize the expenses, was held to be designed to increase the compensation or per diem of the members of the General Assembly in violation of this provision of the Constitution. *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

Since such increase is prohibited during term of office.—S. C. Const., Art. 3, § 9, considered with this section, clearly prohibits increasing the compensation of members of the legislature during their term of office, but the payment of "expenses", *eo nomine*, however, is not prohibited by these provisions. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

S. C. Const., Art. 3, § 30 does not apply to legislature.—S. C. Const., Art. 3, § 30, which is a general provision relating to compensation of public officers, is not applicable to members of the legislature, since the compensation and expenses of legislators are treated specifically in this section and S. C. Const., Art. 3, § 9. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

Meaning of terms in S. C. Const., Art. 3, § 30.—In S. C. Const., Art. 3, § 30, the words "compensation," "fee," and "allowance" are used co-ordinately, and apparently it was intended that each of them should have a particular meaning. "Allowance" evidently refers to payments of whatever

nature other than those covered by "compensation" and "fee." "Compensation," therefore, as used in § 30, must have its usual meaning, for if it includes other payments covered by the term "allowance," then the use of the latter term is entirely superfluous—a result foreign to the genius of statutory and constitutional construction. No good reason appears why the word

"compensation" should be given one meaning in § 30 and another in § 9 of this Article. From all of which it is concluded that this word as used in § 9 refers only to payment for services rendered, and does not include the allowance for expenses. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

§ 20. Elections "*viva voce*."

In all elections by the General Assembly or either House thereof, the members shall vote "*viva voce*", except by unanimous consent, and their votes thus given shall be entered upon the Journal of the House to which they respectively belong.

1918 (30) 1123; 1919 (31) 40.

See Const. 1868, Art. II, § 24.

§ 21. Adjournments.

Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it shall be at the time sitting.

See Const. 1868, Art. II, § 25.

§ 22. Journal; yeas and nays.

Each house shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of ten members of the House or five members of the Senate, respectively, be entered on the journal. Any member of either house shall have liberty to dissent from and protest against any Act or resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the journal.

See Const. 1868, Art. II, § 26.

Journal must be considered as a whole.—In determining from its journal what was or was not done by the Senate, the journal must be considered as a whole, as any other record would be. *State v. Tollison*, 100 S. C. 165, 84 S. E. 819 (1915).

The Senate has the right and power, while in session, to correct its own journal. *State v. Tollison*, 100 S. C. 165, 84 S. E. 819 (1915).

§ 23. Doors open.

The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

See Const. 1868, Art. II, § 27.

§ 24. Holding two offices.

No person shall be eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia and Notaries Public; and if any member shall accept or exercise any of the said disqualifying offices or positions he shall vacate his seat.

See Const. 1868, Art. II, § 28.

Senate and House alone judge qualifications of members.—In a case brought to determine whether defendants had vacated their offices in the General Assembly in view of the fact that they had accepted positions as trustees of the University of South Carolina, the court held that since S. C. Const., Art. 3, § 2 prescribes that the Senate and House shall be the judges of the qualifications of their own members, this is not a field in which the courts may exercise powers to correct either nonaction or wrongful action on the part of these legislative bodies. *Culbertson v. Blatt*, 194 S. C. 105, 9 S. E. (2d) 218 (1940).

Plaintiff must show personal interest to invoke section.—A suit to invoke the prescriptions of this constitutional provision

and S. C. Const., Art. 2, § 2, which provides that no person shall hold two offices of honor or profit at the same time, may not be maintained by one who fails to show in his complaint that he has some personal interest in the situation other than that shared in common by other members of the public. *Culbertson v. Blatt*, 194 S. C. 105, 9 S. E. (2d) 218 (1940).

Membership in legislature and on auditorium board is prohibited.—A member of the legislature cannot sit upon the board of auditorium trustees and, at the same time, retain his membership in the General Assembly. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

§ 25. Vacancies.

If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either house shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office or position, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President of the Senate or Speaker of the House of Representatives, as the case may be, for the purpose of filling the vacancy thereby occasioned for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disqualified, was elected to serve, or the defaulting election district ought to have chosen a member or members.

See Const. 1868, Art. II, § 29.

§ 26. Oath of office.

Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed,) and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. I do further solemnly swear (or affirm) that I have not since the first day of January, in the year Eighteen hundred and Eighty-one, engaged in a duel as principal or second or otherwise; and that I will not, during the term of office to which I have been elected (or appointed) engage in a duel as principal or second or otherwise. So help me God."

See Const. 1868, Art. II, § 30.

Stated in *Verner v. Seibels*, 60 S. C. 572, 39 S. E. 274 (1901).

Cited in *Denmark v. Corley*, 100 S. C. 433, 84 S. E. 884 (1915); *State v. Messervy*, 86 S. C. 503, 68 S. E. 766 (1910).

§ 27. Removal of officer.

Officers shall be removed for incapacity, misconduct or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution.

See Const. 1868, Art. II, § 31.

Scope of section.—This section requires that officers shall be removed in the manner provided by law for incapacity, misconduct, or neglect of duty, legally shown to the removing power, and leaves to the legislature the discretion to provide the manner of removal, the designation of the person or tribunal which shall have the power of removal, and the procedure to ascertain the fact of incapacity, misconduct, or neglect of duty, unless a mode of trial or removal is provided in the S. C. Constitution. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

Officer is not deprived of office without hearing.—It appears to be the law under this section that a duly elected officer cannot be deprived of his office or salary without a hearing. *Smith v. City Council*, 198 S. C. 313, 17 S. E. (2d) 860 (1941).

The Governor has no implied power to remove an officer holding under the Constitution creating the office and fixing the tenure, unless the power is conferred by the Constitution or statute. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

Nor is such power incident to Governor's office.—The power of removal from office by the Governor is not an incident to his office, but exists only when conferred by the Constitution or statutes, or when it is implied from the conferring of the power of appointment. *State v. Rhame*, 92 S. C. 455, 75 S. E. 881 (1912).

Legislature may remove public officers.—Public officers have no contract or property rights in their offices. Except as provided by the S. C. Constitution, they are subject to legislative control, and the legislature may, subject to the Constitution, fix the term of office, provide for removal, abolish the office, or reduce the term. *State v. Rhame*, 92 S. C. 455, 75 S. E. 881 (1912).

Appointive officer may be removed by appointing officer.—This section does not abrogate the general rule that an appointive officer may be removed at the pleasure of the appointing power, his term of office not having been fixed by law. *Sanders v. Belue*, 78 S. C. 171, 58 S. E. 762 (1907).

Power of Governor to remove sheriff.—The only power of the Governor to remove a sheriff is after trial and conviction in the manner prescribed by the statutes enacted under this section. *State v. Hough*, 103 S. C. 87, 87 S. E. 436 (1915).

Power of legislature to remove sheriff.—The General Assembly, in presence of constitutional provisions, has power to provide method of removal of sheriff from office. *State v. Ballentine*, 152 S. C. 365, 150 S. E. 46 (1929).

Applied in *State v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

Stated in *State v. Sanders*, 118 S. C. 498, 110 S. E. 808 (1920).

Cited in *McDowell v. Burnett*, 90 S. C. 400, 73 S. E. 782 (1912).

§ 28. Homestead; married woman's exemption; taxes; purchase money; waiver; husband and wife; exemption for unmarried person.

The General Assembly shall enact such laws as will exempt from attachment, levy and sale under any mesne or final process issued from any Court, to the head of any family residing in this State, a homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, and to every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property to the value of five hundred dollars, or so much thereof as the property is worth if its value is less than five hundred dollars. The title to the homestead to be set off and assigned shall be absolute and be forever discharged from all debts of the said debtor then existing or thereafter contracted except as hereinafter provided: *Provided*, That in case any woman having a separate estate shall be married to the head of a family who has not of his own

sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head of the family: *Provided, further*, That there shall not be an allowance of more than one thousand dollars' worth of real estate and more than five hundred dollars' worth of personal property to the husband and wife jointly: *Provided further*, That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or personal property exemption or the erection or making of improvements or repairs thereon: *Provided, further*, That the yearly products of said homestead shall not be exempt from attachment, levy or sale for the payment of obligations contracted in the production of the same: *Provided, further*, That no waiver shall defeat the right of homestead before assignment except it be by deed of conveyance, or by mortgage, and only as against the mortgage debt; and no judgment creditor or other creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust the homestead: *Provided, further*, That after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage or otherwise, unless the same be executed by both husband and wife, if both be living: *Provided, further*, That any person not the head of a family shall be entitled to a like exemption as provided for the head of a family in all necessary wearing apparel and tools and implements of trade, not to exceed in value the sum of three hundred dollars.

See Const. 1868, Art. II, § 32.

- I. General Consideration.
- II. Homestead Right.
 - A. Parties Entitled to Homestead Right.
 - B. Where Homestead Right Not Defeated.
 - C. Waiver of Homestead Right.
 - D. Property to Which Homestead Right Applies.

Cross Reference.

For statutes enacted pursuant to this section, see §§ 34-1 to 34-65.

I. GENERAL CONSIDERATION.

Section is liberally but carefully interpreted.—Constitutional and statutory provisions for homestead exemptions, while requiring a liberal interpretation and construction in order that ends sought to be accomplished should not be defeated, should not receive such broad and liberal interpretation and construction as will make of them instruments of fraud and oppression. *Baker v. DeWitt*, 140 S. C. 114, 138 S. E. 626 (1927); *Bonebrake v. Morrow*, 183 S. C. 170, 190 S. E. 506 (1937).

And it is not retroactive. *Bank v. Kohn*, 52 S. C. 120, 29 S. E. 625 (1898).

It applies only to homesteads set off since adoption of Constitution.—*Ex parte Jeter*, 64 S. C. 405, 42 S. E. 196 (1902).

Homestead is exempt from execution for costs incurred in a suit upon a bond executed before the Constitution went into effect. *National Bank v. Goodman*, 33 S. C. 601, 11 S. E. 785 (1891).

Homestead right continues no longer than death.—Widow of testator, if having right to claim homestead in property as "head of family," could not devise property so that devisee would take it free from lien of judgments against testator, since will does not take effect until death and homestead right continues to head of family no longer than death. *Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927).

As section does not create new estate.—This section does not create any new estate, but the title in the husband is burdened with the homestead for the enjoyment of himself and wife. *Davis v. Milady*, 92 S. C. 135, 75 S. E. 363 (1912).

Homestead need not be actually set off.—It is not necessary for a homestead to be actually set off in order to be exempt from levy and sale, and the judgment debtor may make a valid conveyance of such land to a third party, whether it has been admeasured

and set off as a homestead or not. *Eaddy v. Wall*, 183 S. C. 229, 190 S. E. 497 (1937).

Applied in *State v. McCary*, 120 S. C. 361, 113 S. E. 275 (1922); *Ex parte Goldsmith*, 68 S. C. 528, 47 S. E. 984 (1904); *McNair v. Moore*, 64 S. C. 82, 41 S. E. 829 (1902); *Geiger v. Geiger*, 57 S. C. 521, 35 S. E. 1031 (1900); *McClenaghan v. McEachern*, 56 S. C. 350, 34 S. E. 627 (1899); *Willingham v. Willingham*, 55 S. C. 441, 33 S. E. 500 (1899); *Wilson v. Counts*, 52 S. C. 218, 29 S. E. 649 (1898); *McClenaghan v. McEachern*, 47 S. C. 446, 25 S. E. 296 (1896); *McCrae v. Felder*, 12 F. (2d) 554 (1926); *Norwood v. Watson*, 242 F. 885 (1917); *Christensen v. Griffin*, 107 S. C. 456, 93 S. E. 143 (1917); *White v. Barbary*, 103 S. C. 223, 88 S. E. 132 (1916); *In re Anderson*, 103 F. 854 (1900); *Berry v. Berry*, 55 S. C. 303, 33 S. E. 363 (1899); *Pearson v. Pearson*, 59 S. C. 367, 37 S. E. 917 (1901).

Cited in *Adair v. First Nat. Bank*, 139 S. C. 1, 137 S. E. 192 (1927); *Betts & Co. v. Richardson*, 112 S. C. 279, 99 S. E. 815 (1919); *Gibbes v. Hunter*, 99 S. C. 410, 83 S. E. 606 (1914); *Ex parte Miley*, 73 S. C. 325, 53 S. E. 535 (1905); *Hallman v. George*, 70 S. C. 403, 50 S. E. 24 (1905); *Sloan v. Hunter*, 65 S. C. 235, 43 S. E. 788 (1903); *Ex parte Worley*, 49 S. C. 41, 26 S. E. 949 (1897); *Utsey v. Charleston, S. & N. R. Co.*, 38 S. C. 399, 17 S. E. 141 (1893); *Wilson v. Mut. Benefit Life Ins. Co.*, 182 S. C. 131, 188 S. E. 803 (1936).

II. HOMESTEAD RIGHT.

A. Parties Entitled to Homestead Right.

Homestead is right given to head of family.—The right to claim homestead is a personal right given by the Constitution to the head of a family residing in this State, and on his death the right dies with him, unless he leaves a widow or children, in which case it continues to them and to no others. *Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927).

Niece of testatrix is not entitled to homestead exemption in lands devised to her as against debts of testatrix, in view of history of legislation and of this section. *Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927).

Residing in this State.—A resident of this State only may claim homestead exemption in his or her property as against debts, and when such exemption is claimed, the claimant must bring himself or herself within the definition of "head of family" in sense that term is used in homestead laws. *Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927); *Bonebrake v. Morrow*, 13 S. C. 170, 190 S. E. 506 (1937).

Two things are essential to entitle one to the exemption of the homestead provided by this section of the Constitution and § 34-1 et seq. of the Code: (1) the claimant must be the head of a family, and (2) a resident of this State. Unless these two conditions exist in co-ordination, the claim of homestead is defeated. *Bonebrake v. Morrow*, 183 S. C. 170, 190 S. E. 506 (1937).

And not to one who returns merely to claim homestead.—When this section of the Constitution, together with § 34-1 et seq. of the Code, beneficially guaranteed a homestead to the head of a family residing in this State, it meant one who was an actual and legal resident of the State, and not one who has abandoned residence in this State and, when sued, returns for the purpose of claiming a homestead. *Bonebrake v. Morrow*, 183 S. C. 170, 190 S. E. 506 (1937).

Only one homestead may be set aside.—Only one homestead, of the value of \$1,000.00, can be set aside in testator's real estate to those who might be entitled thereto. *Mutual Benefit Life Ins. Co. v. Yarrowborough*, 169 S. C. 486, 169 S. E. 289 (1933).

Head of family must manage house and support dependent.—The head of a family is one who controls, supervises, and manages a house, and has living with him and is supporting some person whom it is either his moral or legal duty to support. A bankrupt who was a single man living alone, whose parents were living, is not the head of a family and entitled to the exemption because he was at the time of his bankruptcy paying the board and expenses of a sister at a school. *In re McGowan*, 170 F. 493 (1909).

At time of attempted levy.—The debtor need not have been the head of a family at the time the debt was contracted. It is sufficient that he was such at the time of the attempted levy. *Gray v. Putnam*, 51 S. C. 97, 28 S. E. 149 (1897).

And need not be husband, father, or of masculine gender.—*Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927).

But may be feme sole.—A feme sole who has neither parent nor brother living in the State, and who has living with her, and entirely dependent on her for support, an invalid sister, is "the head of a family" under this section, though it does not appear that she lives on the land in which the homestead is claimed. *Chamberlain v. Brown*, 33 S. C. 597, 11 S. E. 439 (1890).

Death of head of family transfers homestead right to widow and children.—Upon death of a head of family, who owed debts and to whom no homestead had been assigned in his lifetime, the right to inter-

pose claim of homestead exemption as against debts of deceased is transferred by homestead laws to widow or children or both. *Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927).

Under this section and statutes enacted thereunder, the widow and children of the head of a family are entitled to enforce their right of homestead in property left to them under a will directing payment of testator's debts. *Ex parte Cothran*, 128 S. C. 122, 121 S. E. 556 (1924).

Even though they have separate estates in their own right.—The widow of a person in whom a right of homestead existed is entitled to exemption of homestead in lands of deceased, though she and her children have separate estates in their own right. *Ex parte Brown*, 37 S. C. 181, 15 S. E. 926 (1892).

Exemption in widow's dower lands where homestead granted husband.—A widow cannot claim a homestead exemption in her dower lands in addition to a homestead exemption previously claimed and allowed in her deceased husband's estate. *Lanham v. Glover*, 46 S. C. 65, 24 S. E. 49 (1896).

Exemption is limited by constitutional amount.—A married woman having a separate estate, who becomes bankrupt and whose husband owns personal property of the value of \$150, is entitled to claim only \$350 as the personal property exemption to be set apart to her in the bankruptcy proceedings. *In re McCutchen*, 100 F. 779 (1900).

And a statute exempting more than such amount violates section.—Section 7985 of the 1942 Code, exempting proceeds of life insurance policy for benefit of married woman from claims of husband's creditors, is in violation of this section as making an exemption allowance of husband and wife of more than \$500 and as conflicting with the Constitution, in that the Constitution has occupied full domain of exemptions, so that trustee in bankruptcy would have right to surrender value of life policy. *In re Cunningham*, 15 F. (2d) 700 (1926).

B. Where Homestead Right Not Defeated.

Homestead is not defeated by gift or devise.—Under this section, no gift or devise of property by will can defeat the right of homestead. *Ex parte Cothran*, 128 S. C. 122, 121 S. E. 556 (1924).

Unless wife joins husband in disposition.—This section includes a devise and prevents the alienation of the homestead, either by deed or devise, or in any other manner.

unless the wife joins the husband in the disposition. *Davis v. Milady*, 92 S. C. 135, 75 S. E. 363 (1912).

Or unless wife is dead.—A husband who purchased land subsequent to this section and laid it off as a homestead could not, without the assent of the wife, devise it during her life so as to deprive her of the benefits of the homestead, but, after her death, a devise would be valid. *Davis v. Milady*, 92 S. C. 135, 75 S. E. 363 (1912).

Homestead is not defeated by failure to notify sheriff of claim.—Mere failure to give the sheriff notice of the claim of a homestead cannot impair the debtor's right to same. *Gray v. Putnam*, 51 S. C. 97, 28 S. E. 149 (1897).

A woman is not entitled to exemption because she is a widow.—*Dorn v. Stidham*, 139 S. C. 66, 137 S. E. 331 (1927).

Nor a man because he is married.—The homestead provided for by this section, and statutes enacted pursuant thereto, is not for the use of a man simply because he is a married man with children, but is for the benefit of the family, and one claiming a homestead must show that he is the head of a family. *Ex parte Sams*, 126 S. C. 245, 119 S. E. 798 (1923).

C. Waiver of Homestead Right.

Section protects homestead claimant as to waiver.—The provisions of this section look to the protection of the claimant of homestead by forbidding the waiver thereof before assignment, except by deed of conveyance or by mortgage, and only as against the mortgage debt. No judgment creditors or other creditor shall have the right to invoke the two-fund rule as against the right of homestead. *People's Bank v. O'Shields*, 167 S. C. 296, 166 S. E. 351 (1932).

Scope of "waiver."—The word "waived" in this section, providing that a homestead set off and recorded shall not be waived by deed of conveyance, mortgage, or otherwise unless executed by both husband and wife, does not exclude a grant, mortgage, or any other disposition which may be included in the word "otherwise." A waiver is an intentional relinquishment of a known right. *Davis v. Milady*, 92 S. C. 135, 75 S. E. 363 (1912).

Joint execution by husband and wife is unnecessary to waive homestead, where bankrupt failed to record proceedings in bankruptcy setting aside homestead. *Baker v. De Witt*, 140 S. C. 114, 138 S. E. 626 (1927).

The mortgage of a homestead assigned before this Constitution, but executed after, does not require the signature of both husband and wife, as required by such Constitution, to make it valid. *Ex parte Jeter*, 64 S. C. 405, 42 S. E. 196 (1902).

D. Property to Which Homestead Right Applies.

A life estate in real property is a subject of homestead exemption. The value of such estate, and not the value of the fee simple in the same lands, must be taken as the basis of appraising the exemption. *Bank v. Gibbes*, 54 S. C. 579, 32 S. E. 690 (1899).

Homestead allowance may be limited to personalty.—Where the terms of a will amount to an equitable conversion of the testator's real property into personalty, the homestead allowance therein is limited to personalty. *Dixon v. Davis*, 31 F. Supp. 912 (1940).

And may not be allowed to nonresident.—For case holding that the lien acquired by an attachment on lands under § 10-924

is not divested by a subsequent occupation of the lands by a nonresident for homestead purposes, see *Bonebrake v. Morrow*, 183 S. C. 170, 190 S. E. 506 (1937).

Or in mortgaged lot conveyed by mortgagor.—Mortgagor on conveying one of several mortgaged lots could not, as against grantee's mortgagee, claim homestead out of proceeds of lot conveyed. *People's Bank v. O'Shields*, 167 S. C. 296, 166 S. E. 351 (1932).

Application of "two-fund" doctrine to mortgaged lot conveyed by mortgagor.—Where mortgagor conveyed one of several mortgaged lots, grantee's mortgagee could not under "two-fund doctrine" require prior mortgagees to exhaust mortgagor's homestead before taking proceeds from grantee's lot. *People's Bank v. O'Shields*, 167 S. C. 296, 166 S. E. 351 (1932).

Purchase money for land.—Money borrowed to pay purchase price of land bought from a third party is not purchase money in the sense of the Constitution. *McNair v. Moore*, 64 S. C. 82, 41 S. E. 829 (1902).

§ 29. Taxes laid upon actual value.

All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

See Const. 1868, Art. II, § 33.

An assessment is essential to constitute a liability for an ad valorem tax. *State v. Cheraw & D. R. Co.*, 54 S. C. 564, 32 S. E. 691 (1899).

Applied in *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900); *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *Stelmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898); *Thomas v. Moultrieville*, 52 S. C. 181, 29 S. E. 647 (1898); *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27

S. E. 846 (1897); *In re Jager*, 29 S. C. 438, 7 S. E. 605 (1888); *Charlotte, C. & A. R. Co. v. Gibbes*, 27 S. C. 385, 4 S. E. 49 (1887), affirmed in 142 U. S. 386, 12 S. Ct. 255, 35 L. Ed. 1051 (1892).

Cited in *Mauldin v. City Council*, 42 S. C. 293, 20 S. E. 842 (1895); *Jackson v. Bree-land*, 103 S. C. 184, 88 S. E. 128 (1916); *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937).

§ 30. Extra compensation not permitted; appropriations for repelling invasion.

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

Section is inapplicable to members of General Assembly.—This section, providing that General Assembly should not grant extra compensation, fee, or allowance to any public officer, does not apply to members of General Assembly, since the compensation and expenses of legislators are treated

specifically in S. C. Const., Art 3, §§ 9 and 19, and the term "public officers," for purposes of this section, does not include members of the legislature. *Scroggie v. Scarborough*, 162 S. C. 218, 160 S. E. 596 (1931).

Legislature cannot retroactively increase

pay of county officer.—The legislature, having changed the officers of a county from a fee basis of compensation to a salaried basis, cannot retroactively increase the compensation of any officer for any reason without violating this section. *O'Shields v. Caldwell*, 207 S. C. 194, 35 S. E. (2d) 184 (1945).

Constitutionality of act appropriating expense money for each legislator.—See notes to S. C. Const., Art. 3, § 19.

Applied in *Lyon v. Patterson*, 102 S. C. 525, 87 S. E. 306 (1915).

Stated in *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

Cited in *Hall v. Richards*, 159 S. C. 34, 156 S. E. 12 (1930).

§ 31. Public lands.

Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the General Assembly from granting a right of way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across State land, nor to interfere with the discretion of the General Assembly in confirming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim.

Expected benefits may prevent grant from being donation.—Indirect benefits expected to result from improvement of land granted by the State by way of promotion of public convenience, increase in value of adjacent property, and taxes to be paid on improvements are sufficient to keep such grant from amounting to donation within constitutional inhibition. *State v. Broad River Power Co.*, 177 S. C. 240, 181 S. E. 41 (1935).

And land grant is not prohibited where State receives benefits.—A grant of land for construction of canal, and contract incorporated in statute which relieved successor of grantee from performance of covenants of grant, was held not to be a prohibited "donation" of land, where under terms of grant and contract the State had received electric power of the value of \$180,000.00, the benefit of moneys expended by grantee in construction and maintenance of distribution lines, and generating and property taxes, and would continue to receive such benefits in perpetuity. *State v. Broad River Power Co.*, 177 S. C. 240, 181 S. E. 41 (1935).

Or where grant is for public uses.—Act General Assembly March 5, 1924 (33 St. at Large, p. 1518), leasing land theretofore used as public square for erection of building to contain offices of county and home demonstration agents and other county officers or auditorium for public assemblage, free of rent, is not violative of this section as attempt to devote public property to private corporation, the grant being for pub-

lic uses. *Antonakas v. Anderson Chamber of Commerce*, 130 S. C. 215, 126 S. E. 35 (1924).

Conveyance by city council of municipal property to private person for erection of hotel is not invalid as violative of this section, but is one for a public purpose authorized in the city's charter, and supported by a contractual consideration in the form of substantial returns on tax revenues and benefits to the city and its inhabitants. *Haesloop v. City Council*, 123 S. C. 272, 115 S. E. 596 (1923).

Other land grants to which section does not apply.—Real estate, title in fee to which had been conveyed away by the State in 1892, was not at the time of adoption of the Constitution of 1895 "lands belonging to or under the control of the State" within this constitutional provision prohibiting donation of such land to private corporations or individuals. *State v. Broad River Power Co.*, 177 S. C. 240, 181 S. E. 41 (1935).

Conferring on chamber of commerce site for erection of building is not "donation of public property." *Chapman v. Greenville Chamber of Commerce*, 127 S. C. 173, 120 S. E. 584 (1923).

Land granted by the State under Act Aug. 13, 1873 (7 St. at Large, p. 97), to the city of Charleston in fee simple and in proprietary right does not come under the provisions of this section, the land not having been granted for governmental purposes. *Haesloop v. City Council*, 123 S. C. 272, 115 S. E. 596 (1923).

§ 32. Salary of deceased officer; pensions. [Eliminated.]

1944 (43) 1569; 1945 (44) 36.

§ 33. Marriages of whites and negroes; sexual intercourse.

The marriage of a white person with a negro or mulatto, or person who shall have one-eighth or more of negro blood, shall be unlawful and void. No unmarried woman shall legally consent to sexual intercourse who shall not have attained the age of fourteen years.

- I. Marriages of Whites and Negroes.
- II. Sexual Intercourse.

I. MARRIAGES OF WHITES AND NEGROES.

Rights of child of white person and one having less than one-eighth negro blood.—The child of a union of a white person and one having less than one-eighth negro blood is entitled to exercise all the legal rights of a white man, except those arising from a proper classification, when equal accommodations are afforded. *Tucker v. Blease*, 97 S. C. 303, 81 S. E. 668 (1914).

While the child of a white person and one having less than one-eighth negro blood is entitled to exercise the rights of a white man, in view of this section, school trustees may under statutory authority, upon providing a school for children of this class distinct from both the white and negro schools, suspend such child from the white schools when for the best interest of the other white pupils who would be withdrawn if it was allowed to remain. *Tucker v. Blease*, 97 S. C. 303, 81 S. E. 668 (1914):

Evidence insufficient to prove possession of one-eighth of negro blood.—In *Bennett v. Bennett*, 195 S. C. 1, 10 S. E. (2d) 23 (1940), the evidence submitted by the plaintiff failed to prove that the defendant had one-eighth or more of negro blood in her veins.

Quoted in *Grant v. Butt*, 198 S. C. 298, 17 S. E. (2d) 689 (1941).

II. SEXUAL INTERCOURSE.

This section does not apply to marriage.—The language of this section can have no reference to the age at which a woman can consent to matrimony. *State v. Ward*, 204 S. C. 210, 28 S. E. (2d) 785 (1944).

Statute raising age of consent does not violate section.—Section 16–80 of the Code raising the age of consent to 13 years, is not in violation of this section of the Constitution. *State v. Smith*, 181 S. C. 485, 188 S. E. 132 (1936).

Carnal knowledge of female under age is rape.—Unlawful carnal knowledge of female child under age of 14 (now 16) years, either with or without her consent, is "rape". *State v. Wilson*, 162 S. C. 413, 161 S. E. 104 (1931).

Act constituting assault with intent to ravish.—Overt act amounting to assault with intent to have unlawful sexual intercourse with female under age of 14 (now 16) years, even if she consents, is "assault with intent to ravish". *State v. Wilson*, 162 S. C. 413, 161 S. E. 104 (1931).

Voidable marriage of eleven-year old is not abrogated by separation by mutual agreement four weeks later, before girl attained the age of consent, in view of this section. *State v. Sellers*, 140 S. C. 66, 134 S. E. 873 (1926).

Applied in *State v. Haddon*, 49 S. C. 308, 27 S. E. 194 (1897).

§ 34. Special laws prohibited.

The General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit:

- I. To change the names of persons or places.
- II. To incorporate cities, towns or villages, or change, amend or extend charter thereof.
- III. To incorporate educational, religious, charitable, social, manufacturing or banking institutions not under the control of the State, or amend or extend the charters thereof.

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IV. To incorporate school districts.)

V. To authorize the adoption or legitimation of children.

VI. To provide for the protection of game.

VII. To summon and empanel grand or petit jurors.

VIII. *Eliminated.*

1920 (31) 1700; 1921 (32) 191; 1934 (38) 1623; 1935 (39) 27.

IX. In all other cases, where a general law can be made applicable, no special law shall be enacted: *Provided*, That the General Assembly may enact local or special laws fixing the amount and manner of compensation to be paid to the County Officers of the several counties of the State, and may provide that the fees collected by any such officer, or officers, shall be paid into the treasury of the respective counties.

X. The General Assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operations: *Provided*, That nothing contained in this Section shall prohibit the General Assembly from enacting special provisions in general laws.

XI. The provisions of this Section shall not apply to charitable and educational corporations where, under the terms of a gift, devise or will, special incorporation may be required.

Provided, That the General Assembly is empowered to divide the State into as many zones as may appear practicable, and to enact legislation as may appear proper for the protection of game in the several zones.

1904 (24) 676; 1905 (24) 959; 1934 (38) 1625; 1935 (39) 24; 1934 (38) 1626; 1935 (39) 153.

Editor's note.—The subdivision numbers of this section are identical with those in the Codes of 1912, 1922, 1932 and 1942. They do not coincide, however, with the subdivision numbers assigned to this section in the original Constitution as reproduced in the Code of 1902, since this section originally contained thirteen subdivisions. The following changes have been made:

(1) Subdivision II in the original section in the 1902 Code was repealed by a joint resolution and an act: 1904 (24) 676; 1905 (24) 959.

(2) Subdivision IX in the original section in the 1902 Code was repealed by a joint resolution and an act: 1904 (24) 676; 1905 (24) 959.

(3) Subdivision X in the original section as reproduced in the 1902 Code (subdivision VIII in the Codes of 1912, 1922, and 1932) was repealed by joint resolutions and acts 1920 (31) 1700; 1921 (32) 191 and 1934 (38) 1623; 1935 (39) 27.

(4) Subdivision XI in the original section as reproduced in the 1902 Code (subdivision IX in the Codes of 1912, 1922, 1932, 1942, and in this Code) was amended by a joint resolution and an act: 1934 (38) 1625; 1935 (39) 24.

(5) The proviso to this section was proposed and ratified by a joint resolution and an act: 1934 (38) 1626; 1935 (39) 153. Such proviso immediately follows subdivision XI of this section in the Code of 1942 as well as in this Code.

A table of the subdivision numbers which have been assigned to the subdivisions of this section, commencing with the Code of 1902 and continuing down to and including the present Code, is as follows: Although subdivision VIII (original X) was repealed, it appears in the 1922 and 1932 Codes.

Original Sub- division No. in 1902 Code	1912 Code	1922 Code	1932 Code	1942 Code	1952 Code
I	I	I	I	I	I
II	Repealed	—	—	—	—
III	II	II	II	II	II
IV	III	III	III	III	III
V	IV	IV	IV	IV	IV
VI	V	V	V	V	V
VII	VI	VI	VI	VI	VI
VIII	VII	VII	VII	VII	VII
IX	Repealed	—	—	—	—
X	VIII	VIII	VIII	Repealed	—
XI	IX	IX	IX	IX	IX
XII	X	X	X	X	X
XIII	XI	XI	XI	XI	XI

- I. General Consideration.
- II. Incorporating or Amending City Charters.
- III. Charters of Institutions Not Under State Control.
- IV. Incorporation of School Districts.
- V. Summoning and Empanelling Jurors.
- VI. Compensation of County Officers.
- VII. Where General Law Can Be Made Applicable.
 - A. General Consideration.
 - B. Acts Violative of Section.
 - C. Acts Not Violative of Section.
- VIII. Special Provisions in General Laws.
 - A. General Consideration.
 - B. Acts Violative of Section.
 - C. Acts Not Violative of Section.

I. GENERAL CONSIDERATION

Section limits power of legislature.—The object of this section was to place a limitation upon the power of the legislature. The evil sought to be remedied was the great and growing evil of special and local legislation. To remedy this evil, such legislation was absolutely prohibited as to certain enumerated subjects, and conditionally prohibited as to all other subjects. In considering the effect of a constitutional limitation, it must be borne in mind that the legislative will is unlimited, unless there is in the Constitution some express or necessarily implied restriction. If the intention is not to limit the power of the legislature, all that is necessary is for the Constitution to be silent. It must be assumed that the framers of the Constitution knew this. What, then, was the purpose of the clause under consideration? Was it to limit or restrict legislative power, or was it intended as a mere rule of caution, or as a mere matter of moral persuasion? The fact that it was placed at all in the Constitution, and in such prohibitive terms, shows that it was intended as a restriction upon legislative

power, and the express declaration in S. C. Const., Art. 1, § 29, "that the provisions of the Constitution shall be construed to be mandatory and prohibitory and not merely directory, except where expressly made directory or permissive by its own terms," forbids a construction which would reduce the provision to a mere matter of legislative discretion. *State v. Hammond*, 66 S. C. 219, 44 S. E. 797 (1903); *Thomas v. Macklen*, 186 S. C. 290, 195 S. E. 539 (1938).

Through medium of judiciary.—The provisions of this section of the Constitution are a limitation upon the legislative power, and the power to enforce this limitation is in the judicial department. *Thomas v. Macklen*, 186 S. C. 290, 195 S. E. 539 (1938).

By uniform law on like subjects.—One of the purposes sought to be accomplished by this section is to make uniform the statute of law on like subjects. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

Statute need not be general in form for section to apply.—Whether a statute be a law of a general nature or not depends upon its subject matter and not upon its form. Hence, to come within this constitutional inhibition, it is not necessary that the statute be general in form. *Thomas v. Macklen*, 186 S. C. 290, 195 S. E. 539 (1938).

Legislative classification is proper if justified.—The legislature may classify for the purpose of legislation if some intrinsic reason exists why the law should operate upon some and not upon all, or should affect some differently from others. But this classification must be based upon differences which are either defined by the Constitution or else are natural or intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation. *Sansing v. Cherokee County Tour-*

ist Camp Board, 195 S. C. 7, 10 S. E. (2d) 157 (1940).

For local and special legislation to be valid there must be a substantial distinction, having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree at least account for or justify the restriction of the legislation. *Shillito v. Spartanburg*, 214 S. C. 11, 51 S. E. (2d) 95 (1948).

And special act may best meet needs of particular case.—The language of this constitutional provision plainly implies that there are or may be cases where a special act will best meet the exigencies of a particular case and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. *Townsend v. Richland County*, 190 S. C. 270, 2 S. E. (2d) 777 (1939).

Where special law does not violate section.—A law which is special in the sense that it imposes a tax or grants an exemption, limited in application and incidence to persons or property within a certain county, does not contravene the provisions of this section. This is so, not only from the very nature of the matter to be dealt with, but by virtue of the provisions of S. C. Const., Art. 7, § 11, expressly empowering the General Assembly to make special provision for municipal government. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

Burden of proof is on party attacking constitutionality of act.—Where respondents did not assert nor attempt to prove that the General Assembly, when it passed an act incorporating an orphanage, did not comply with the requirements of S. C. Const., Art. 9, § 2, in that it should have a concurrent resolution adopted by a two-thirds vote of each house authorizing the introduction of a bill to incorporate the orphanage, it was held that one who attacks the constitutionality of an act of the General Assembly must show it conclusively, and where the attack includes a matter of fact, the charge must be proved by him who makes it. *Epworth Orphanage v. Wilson*, 185 S. C. 243, 193 S. E. 644 (1937), holding the act constitutional on these grounds.

Amendment of special act passed before Constitution.—The legislature cannot by a local act passed after the Constitution of 1895 amend a local and special act passed

before the Constitution, when both relate to a subject prohibited by this section. *De Hay v. Com'rs*, 66 S. C. 229, 44 S. E. 790 (1903).

Applied in *Dean v. Spartanburg County*, 59 S. C. 110, 37 S. E. 226 (1900); *Hill v. City Council*, 59 S. C. 396, 38 S. E. 11 (1901); *Nance v. Anderson County*, 60 S. C. 501, 39 S. E. 5 (1901); *Carolina Gro. Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381 (1900); *State v. Franklin*, 62 S. C. 251, 40 S. E. 1038 (1902); *De Hay v. Com'rs*, 66 S. C. 229, 44 S. E. 790 (1903); *Severance v. Murphy*, 67 S. C. 409, 46 S. E. 35 (1903); *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905); *Murph v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907); *Hodge v. Trustees of School District*, 80 S. C. 518, 61 S. E. 1009 (1908); *Manigault v. Springs*, 199 U. S. 473, 26 S. Ct. 127, 50 L. Ed. 274 (1905); *Board of Township Com'rs v. Buckley*, 82 S. C. 352, 64 S. E. 163 (1909); *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Pineland Club v. Berg*, 110 S. C. 505, 96 S. E. 915 (1918); *State v. Mooror*, 152 S. C. 455, 150 S. E. 269 (1929); *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930); *Smith v. Ashmore*, 184 S. C. 316, 192 S. E. 565 (1937).

Stated in *Rutledge v. Greenville*, 155 S. C. 520, 152 S. E. 700 (1930).

Cited in *State v. Higgins*, 51 S. C. 51, 28 S. E. 15 (1897); *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900); *Lowrimore v. Palmer Mfg. Co.*, 60 S. C. 153, 38 S. E. 430 (1901); *Riley v. Charleston Union Station Co.*, 67 S. C. 84, 45 S. E. 149 (1903); *Buist v. City Council*, 77 S. C. 260, 57 S. E. 862 (1907); *McCullough v. Graham*, 70 S. C. 63, 49 S. E. 1 (1904); *McMeekin v. Central Carolina Power Co.*, 80 S. C. 512, 61 S. E. 1020 (1908); *Fooshe v. McDonald*, 82 S. C. 22, 63 S. E. 3 (1908); *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916); *State v. Ferri*, 111 S. C. 219, 97 S. E. 512 (1918); *Thomas v. Foster*, 108 S. C. 98, 93 S. E. 397 (1917); *People's Bank of Rock Hill v. People's Bank of Anderson*, 122 S. C. 476, 115 S. E. 736 (1923); *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923); *State v. Columbia Ry. Gas, etc., Co.*, 129 S. C. 455, 124 S. E. 758 (1924); *Salley v. McCoy*, 186 S. C. 1, 195 S. E. 132 (1937); *Valentine v. Robinson*, 188 S. C. 194, 198 S. E. 197 (1938); *Smith v. Greenville County*, 188 S. C. 349, 199 S. E. 416 (1938); *Ridgill v. Clarendon County*, 188 S. C. 460, 199 S. E. 683 (1938); *Kirk v. Watson*, 191 S. C. 162, 4 S. E. (2d) 16 (1939); *Senn v. Spartanburg County*, 192 S. C. 489, 7 S. E. (2d) 454 (1940); *Scott v. Anderson County*, 195 S. C. 92, 10 S. E. (2d) 359 (1940);

Greenville County Fair Ass'n v. Christenberry, 198 S. C. 338, 17 S. E. (2d) 857 (1941); Spartanburg County v. Pace, 204 S. C. 322, 29 S. E. (2d) 333 (1944); Rush-ton v. State Highway Dept., 207 S. C. 112, 34 S. E. (2d) 484 (1945); Anderson v. Page, 208 S. C. 146, 37 S. E. (2d) 289 (1946); Pursley v. Inman, 215 S. C. 243, 54 S. E. (2d) 800 (1949); Textile Hall Corp. v. Hill, 215 S. C. 262, 54 S. E. (2d) 809 (1949).

II. INCORPORATING OR AMENDING CITY CHARTERS.

Act authorizing city to issue notes is not local law extending charter. Sullivan v. City Council, 133 S. C. 156, 130 S. E. 872 (1925).

Nor is act authorizing city to issue coupon bonds.—Act authorizing the city of Charleston to issue coupon bonds to pay the present bonded debt does not change or alter the charter of the city, and is not obnoxious to subdiv. 2. Buist v. City Council, 77 S. C. 260, 57 S. E. 862 (1907).

But extension of town limits by annexation changes charter.—Extension of incorporated town's limits by annexation of territory changes and extends town charter within this constitutional prohibition of special legislation to "change, amend, or extend the charter thereof." Lancaster v. Town Council, 160 S. C. 150, 158 S. E. 233 (1931).

General statute is void where at variance with general law.—A statute which purported to be general by applying to the incorporation of all "resort communities" of a designated class, but which in effect provided for the machinery of government for Myrtle Beach, was repugnant to the provisions of this section of the Constitution as it was not only essentially different from the general law on this subject, but was also directly at variance with it. Thomas v. Macklen, 186 S. C. 290, 195 S. E. 539 (1938).

Act authorizing election on abandonment of commission charter in one city is invalid. Floyd v. Calvert, 114 S. C. 116, 103 S. E. 82 (1920).

Statute not void as special legislation.—Statute providing for erection of county tuberculosis hospital on site determined by hospital trustees is not void as special legislation or legislation discriminating against city. Law v. Spartanburg, 148 S. C. 229, 146 S. E. 12 (1928).

III. CHARTERS OF INSTITUTIONS NOT UNDER STATE CONTROL.

Section does not prohibit auditorium assessment district.—There is no prohibition

of auditorium or similar special assessment districts, or special legislation thereon, in this section. Ashmore v. Greater Greenville Sewer District, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

And extending boundaries of school district is constitutional.—A statute creating the school district of Yorkville by extending its boundaries is not in violation of this section of the Constitution, since subdiv. 3 of this section applies to institutions of learning and not to school districts. State v. McCaw, 77 S. C. 351, 58 S. E. 145 (1907).

Issuance of hospital bonds by township.—Act authorizing township to issue bonds for hospital is not an attempt to create hospital by special law. Battle v. Willcox, 128 S. C. 500, 122 S. E. 516 (1924).

IV. INCORPORATION OF SCHOOL DISTRICTS.

Previous incorporation statute may be amended.—An act amending an act creating the Anderson school district by extending its boundaries does not violate subdiv. 4, since such law does not incorporate a district but only amends a previous statute of incorporation. Burris v. Brock, 95 S. C. 104, 79 S. E. 193 (1913).

County may be divided into high school districts.—An act providing for division of Dillon County into high school districts is not special legislation in violation of this section. Powell v. Hargrove, 136 S. C. 345, 134 S. E. 380 (1926).

And centralized high school may be set up for five districts.—A statute providing for establishment of centralized high school for five districts is not unconstitutional. Arnette v. Ford, 129 S. C. 526, 125 S. E. 138 (1924).

And five districts may be consolidated into one.—An act which attempts to incorporate a new school district, the necessary result of which is the consolidation of five existing districts into one, does not violate subdiv. 4 as consolidation is not incorporation. Walker v. Bennett, 125 S. C. 389, 118 S. E. 779 (1923).

But election to re-establish former district may violate section.—A statute directing the board of education of a particular county to order an election, restricted to electors within the school district proposed to be re-established as it existed before consolidation, contemplated the incorporation of a new school district within the constitutional prohibition against local or special laws. Kears v. Lancaster County Supt. of Ed., 172 S. C. 59, 172 S. E. 767 (1934).

V. SUMMONING AND EMPANELING JURORS.

This section embraces the listing and drawing of jurors. The object was to make the jury law uniform throughout the entire State, which can only be accomplished by interpreting the term. *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916).

Acts in violation of section.—The acts under which the grand and petit jurors for the February term of 1901 of the sessions court for Laurens County were drawn were unconstitutional for violation of this section. *State v. Garrett*, 64 S. C. 249, 42 S. E. 108 (1902).

An act relating to the drawing and term of service of juries in the circuit courts, containing local and special provisions in relation to the drawing and term of service of jurors in certain counties of the State, is unconstitutional as violative of this section. *State v. Queen*, 62 S. C. 247, 40 S. E. 553 (1902).

Independent general act not violative of section.—An act providing for the drawing of jurors in counties containing 40,000 inhabitants or more is an independent and general act, and is not a violation of this section. *State v. Berkeley*, 64 S. C. 194, 41 S. E. 961 (1902).

VI. COMPENSATION OF COUNTY OFFICERS.

Special act is unconstitutional where general law can apply.—In *Boggs v. O'Dell*, 190 S. C. 442, 3 S. E. (2d) 486 (1939), an act providing for the compensation of county officers and employees of certain counties was held to be a special act where a general law could be made applicable, and was held unconstitutional for that reason.

Valid special act creating masters' offices.—The statute under which the masters' offices were created is a valid special act, as the need for the office of master in the various counties in which it should be created varies according to the peculiar circumstances existing in the respective counties. For the same reason, a later act which provides for the payment of salaries in lieu of fees to masters in a given county is a valid special act. *Townsend v. Richland County*, 190 S. C. 270, 2 S. E. (2d) 777 (1939).

Invalid act fixing salary of clerk.—An act fixing the salary of the clerk of court of A. county on a different basis from that by which salaries of such clerks are fixed by general law contravenes this section. *State v. King*, 108 S. C. 339, 94 S. E. 866 (1918).

Invalid acts fixing salaries for school commissioners.—Statutes providing a salary for county school commissioners for Berkeley County, are void, being special acts relating to subjects prohibited by this section. *De Hay v. Com'rs*, 66 S. C. 229, 44 S. E. 790 (1903).

Act fixing compensation of judge held unconstitutional.—An act [1922 (32) 910] which fixed the compensation of the probate judge of Pickens County, thereby amending the general law providing for the same (§§ 20-22 et seq. of the Code), was held to be unconstitutional in *Hudson v. Pickens*, 190 S. C. 490, 3 S. E. (2d) 603 (1939).

Act fixing salary of sheriff held unconstitutional.—In *Gamble v. Clarendon County*, 188 S. C. 250, 198 S. E. 857 (1938) a county salary act fixing the salary of the sheriff of Clarendon County was held to be unconstitutional as special legislation.

Acts unconstitutional prior to amendment of subdivs. 8 and 9.—An act which provided that the fees allowed the treasurer of McCormick County should when collected be paid into the county treasury and be used for ordinary county purposes was held unconstitutional under the provisions of subdiv. 8 of this section, such act having been enacted prior to the elimination in 1935 of such subdivision from the Constitution and the amendment of subdiv. 9 thereof. *Duncan v. McCormick County*, 192 S. C. 216, 6 S. E. (2d) 265 (1939).

See *Holt v. Calhoun*, 175 S. C. 481, 179 S. E. 501 (1935), for case holding a statute unconstitutional as local and special legislation prior to the amendment of subdiv. 9 of this section and the elimination of subdiv. 8 therefrom, which statute had a provision providing that all fees and licenses collected by the clerk of court of Horry County should go into a general county fund, and a salary should be paid the clerk in lieu of such fees and licenses.

In *Williamsburg County v. Graham*, 190 S. C. 233, 196 S. E. 547 (1938), a special act of the legislature which deprived the sheriff of Williamsburg County of the fees coming into his hands as such officer and to which he was entitled under the general law was held to be unconstitutional as it violated the provisions of this section. (Editor's note.—The above act was passed prior to the elimination of subdiv. 8 from the Constitution and the amendment of subdiv. 9 thereof.) See *Salley v. McCoy*, 182 S. C. 249, 189 S. E. 196 (1936).

An act providing that the salary of the clerk of the court of Oconee County shall be \$1,350 per year, payable monthly, and

that he shall collect all fees and costs and pay the same over to the county treasurer was held unconstitutional as violating subdiv. 8 of this section of the Constitution (eliminated in 1935). *State v. Burns*, 73 S. C. 194, 52 S. E. 960 (1906).

Act No. 131 of the Acts of 1933, enacted prior to the amendment of S. C. Const., Art. 3, § 34, subdiv. 9, and devolving all duties, powers, and privileges exercised by the sheriff with regard to the collection of delinquent taxes, the levying upon the property of delinquent taxpayers, the execution of deeds in case of sale upon the chief of rural police of the county, and further providing that the sheriff of Sumter County shall keep the books and records pertaining to tax collections, is unconstitutional insofar as it deprives the sheriff of Sumter County of fees and commissions on delinquent taxes after its effective date. *Hurst v. Sumter County*, 189 S. C. 376, 1 S. E. (2d) 238 (1939).

VII. WHERE GENERAL LAW CAN BE MADE APPLICABLE.

A. General Consideration.

This section is not retroactive, and hence does not make void statutes requiring landowners in certain counties to clean out running streams on their lands during certain periods of the year. *State v. Tucker*, 54 S. C. 251, 32 S. E. 361 (1899).

And it does not apply to special legislation authorized by Constitution.—This section does not apply to legislation upon those subjects as to which the General Assembly, under the authority of the Constitution, may legislate particularly, even though the same is special in character. *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916).

S. C. Const., Art. 7, § 11 was framed in view of this section.—The authority to make special provision for municipal government contained in S. C. Const., Art. 7, § 11, was evidently framed in view of the provisions of this section, and was intended to give the legislature a wider latitude in the making of special provisions for county and township government. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

And is limited thereby in its application.—S. C. Const., Art. 7, § 11 may not be soundly applied to uphold every special legislative provision with respect to municipal government in disregard of the inhibition of this section. *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

Subdivision 9 of this section must be construed with subdiv. 10.

Gillespie v. Blackwell, 164 S. C. 115, 161 S. E. 869 (1931).

And subdiv. 10 permits special provisions in general laws.—An amendment providing for appointment of school trustees to permit their election in certain counties is not void as a special law, since subdiv. 10 permits enactment of special provisions in general laws. *State v. Meares*, 148 S. C. 118, 145 S. E. 695 (1928).

Conditions under which subdiv. 10 does not apply.—Where there is an express prohibition in the Constitution concerning which special laws shall not be enacted, such as there shall be no special law affecting game, the proviso in subdiv. 10 is not applicable. *Sloan v. Fair*, 172 S. C. 485, 174 S. E. 436 (1934).

Subdivision 9 must also be construed with S. C. Const., Art. 11, § 5.—S. C. Const., Art. 11, § 5 must be construed in connection with subdiv. 9 of this section, and so construed, a separate act extending boundaries of school district already created may be regarded as a special provision in the general law. *State v. McCaw*, 77 S. C. 351, 58 S. E. 145 (1907).

Discretion of legislature to determine applicability of general law.—The legislature has a sound discretion to decide when a general law can be made applicable, and the courts should not interfere to set aside a statute unless the legislative discretion has been clearly and palpably abused. *Townsend v. Richland County*, 190 S. C. 270, 2 S. E. (2d) 777 (1939).

Such applicability is judicial question ultimately.—It is primarily a legislative question as to whether a general law can be made applicable, but ultimately it is a judicial question for although due consideration must be given to the legislative judgment, the final responsibility rests upon the court. *Gillespie v. Pickens County*, 197 S. C. 217, 14 S. E. (2d) 900 (1941).

In *Jellico v. Com'rs. of State*, 83 S. C. 481, 65 S. E. 725 (1909), it was held that this question must be determined by the legislature and not by the court.

Whether, within this section, a general law can be made applicable is not a question for the legislature, but one which the courts must decide. *Tisdale v. Scarborough*, 99 S. C. 377, 83 S. E. 594 (1914).

Whether an act is prohibited by this section is a judicial question. *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916).

B. Acts Violative of Section.

Act confirming town annexation election on petition not signed by majority of freeholders in territory annexed was held un-

constitutional as special legislation. *Lancaster v. Town Council*, 160 S. C. 150, 158 S. E. 233 (1931).

Act fixing limitation period for actions against counties.—Acts 1938 [1938 (40) 1893], which fixed a period of limitation for actions against counties for salaries, fees, etc., but which excluded from its operation claims against four counties of the State, violated subdiv. 9 of this section. *Gillespie v. Pickens County*, 197 S. C. 217, 14 S. E. (2d) 900 (1941).

Act giving only one individual right to recover for tort.—In the case of *Sirrine v. State*, 132 S. C. 241, 128 S. E. 172 (1925), the court held that an act which conferred upon the plaintiff a right denied to all others, that is, a right to recover for the tortious acts of the agents and servants of the State, did not come under the provisions of S. C. Const., Art. 17, § 2, and, therefore, was violative of this section. *Ouzts v. State Highway Dept.*, 161 S. C. 21, 159 S. E. 457 (1931).

Act providing for collection of delinquent taxes.—In *Douglass v. Watson*, 186 S. C. 34, 195 S. E. 116 (1938), an act which provided for the collection of delinquent taxes in Chesterfield County was held to run counter to the inhibition of this section of the Constitution against the enactment of a local or special law where a general law can be made applicable.

Act providing for property tax levy.—An act providing for an annual tax levy in the city of Spartanburg for the benefit of the Spartanburg city firemen's pension fund was held violative of this section of the Constitution. *Shillito v. Spartanburg*, 214 S. C. 11, 51 S. E. (2d) 95 (1948).

In *Shillito v. Spartanburg*, 214 S. C. 11, 51 S. E. (2d) 95 (1948), a special act was held invalid for conflict with this section because it undertook to levy and apply the proceeds of a property tax to a firemen's pension fund in a single city, in the face of a general law upon the subject which was applicable to all cities of the class of that concerned. *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

Act requiring that cotton in Bethune should be weighed by public weigher is void as special legislation under this section, since a general law could have been made applicable. *Barfield v. Stevens Mercantile Co.*, 85 S. C. 186, 67 S. E. 158 (1910).

Acts relative to zoning regulations.—Acts which undertook to authorize the commissioners of certain named "public service district" of Charleston County to promulgate and enforce zoning regulations were

held invalid because of conflict with this section of the Constitution which prohibits the enactment by the legislature of a special law in cases where a general law can be made applicable. *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

County supply act.—The York County supply act of 1940, authorizing the sale of particular contraband seized under the law relating to alcoholic liquors, was held to violate this section of the Constitution. *South Carolina Tax Comm. v. Moss*, 195 S. C. 321, 11 S. E. (2d) 442 (1940).

County tourist camp act.—The act creating the Cherokee County tourist camp board runs counter to the constitutional provision prohibiting special legislation, for it is a special law where a general law could be made applicable. *Sansing v. Cherokee County Tourist Camp Board*, 195 S. C. 7, 10 S. E. (2d) 157 (1940).

Statute authorizing exercise of county police powers.—A statute authorizing the corporate authorities of one county to exercise certain police powers was held unconstitutional because it contravened this section. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Statute prohibiting felling trees across running streams of certain counties, and making it a misdemeanor to fail to remove a dam out of a running stream in certain counties, is unconstitutional as special legislation in violation of this section. *State v. Hammond*, 66 S. C. 219, 44 S. E. 797 (1903).

Statute providing for Greenville County game and fish commission was held unconstitutional as a special law enacted where general law can be made applicable. *Sloan v. Fair*, 172 S. C. 485, 174 S. E. 436 (1934).

Statute providing that equity cases be tried in open court.—Statute providing that in the counties of the sixth circuit, on demand of either party, equity cases shall be tried in open court on testimony there offered, covers the same subject matter as is covered by the general provision of the statute, providing that a cause may be referred on application of either party or on the court's own motion where a long account is to be taken, and is therefore violative of this section. *Southern Nat. Bank v. Farmington Corp.*, 99 S. C. 475, 83 S. E. 637 (1914).

Statute requiring execution of bonds of county officials.—Statute requiring bonds of certain officials of Pickens County to be executed by surety company was held unconstitutional as special law, where general law can be made applicable; but part of same statute which fixed amount of official bonds for certain officers of Pickens County

and provides for payment of premium was held constitutional. *Gillespie v. Blackwell*, 164 S. C. 115, 161 S. E. 869 (1931).

Statute requiring removal of trees from creek.—Statute making it a misdemeanor not to remove at a certain time all trees and rafts from a certain creek, and confining its operation to named counties, is void as a special act at variance with this section. *State v. Hammond*, 66 S. C. 300, 44 S. E. 933 (1903).

For act violating section as being a special act where general law was applicable, see *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937).

For acts violating section prior to 1935 amendment, see *Wallace v. Sumter County*, 189 S. C. 395, 1 S. E. (2d) 345 (1939).

C. Acts Not Violative of Section.

Act authorizing action against State for use of impure vaccines is not violative of prohibition against special laws. *Sandel v. State*, 115 S. C. 168, 104 S. E. 567 (1920).

Thus an act authorizing an administrator of children, alleged to have been killed by impure vaccines furnished by the State, to sue the State on account of their death is not in violation of this section. *Sandel v. State*, 115 S. C. 168, 104 S. E. 567 (1920).

Act authorizing city to issue certificates of indebtedness is not special law where general law could have been made applicable. *Sullivan v. City Council*, 133 S. C. 189, 130 S. E. 876, 133 S. E. 340 (1925); *Sullivan v. City Council*, 133 S. C. 156, 130 S. E. 872 (1925).

Act authorizing county to issue bonds.—Act authorizing county or other political subdivision to issue bonds is not within prohibition of subdiv. 9 of this section as to enactment of special laws, where general law can be made applicable. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926).

Acts authorizing school bond issue.—This section does not render invalid an act authorizing a school district to issue bonds to erect a school building. *State v. Brock*, 66 S. C. 357, 44 S. E. 931 (1903).

Act as to *Anderson County* school bonds, providing for issuance of bonds to bear a rate of interest not exceeding five per cent payable semiannually, does not violate subdiv. 9 of this section. *Brownlee v. Brock*, 107 S. C. 230, 92 S. E. 477 (1917).

Act creating new highway commission.—Act No. 831 [1936 (39) 1557], creating a new highway commission, does not violate this section as being a special act. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Act enlarging school districts.—Subdivision 9 of this section does not render invalid an act enlarging a school district and authorizing the trustees to hold an election on the question of issuing bonds. *Burriss v. Brock*, 95 S. C. 104, 79 S. E. 193 (1913).

Act imposing tax on places of amusement is not invalid as being special law where general law would suffice. *Cnrtdts v. South Carolina Tax Comm.*, 131 S. C. 362, 127 S. E. 438 (1925), affirmed in 273 U. S. 669, 47 S. Ct. 471, 71 L. Ed. 831 (1927).

Act providing for legislative investigation of a canal project under grant from the State is not a violation of subdiv. 9 of this section, since there is no apparent scope for a general law and since there is no showing of any other grant of the State that may come under investigation. *Robertson v. Peeples*, 120 S. C. 176, 115 S. E. 300 (1919).

Act regulating size and weight of trucks.—In *State v. Nutt Co.*, 180 S. C. 19, 185 S. E. 25 (1935), an act regulating the size and weight of trucks was held not to violate this section of the Constitution.

Act undertaking to provide for free bridges across certain rivers in the State is not a special law in contravention of this section, since the object to be accomplished related to a corporate purpose of the township in which the bridges were to be provided, and the situation was one which could not have been dealt with by a general law. *Verner v. Muller*, 89 S. C. 545, 72 S. E. 393 (1911).

County bond issue for benefit of State Highway Commission.—General bond act authorizing issuance of bonds by county to advance funds to State Highway Commission under reimbursement agreement is not in conflict with subdiv. 9 of this section prohibiting enactment of special law where general law can be made applicable. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926).

County tax statutes.—Sections 65-2191 to 65-2194, 65-2198, 65-2199 and 65-2201 to 65-2203 of the Code, creating the office of delinquent tax collector in Pickens County and transferring certain powers formerly vested in the sheriff to the collector, constitute a matter of local government within the provisions of S. C. Const., Art. 7, § 11, and are not a matter of State legislation in the sense contemplated by the requirement of uniformity contained in this section of the Constitution. *Craig v. Pickens County*, 189 S. C. 164, 200 S. E. 825 (1939).

Drainage statutes are general in their operation, and are not special laws in viola-

tion of subdiv. 9 of this section. *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916).

Sections 14-3481 to 14-3485 do not violate this section because they do not contain an unalterable schedule of salaries. *O'Shields v. Caldwell*, 207 S. C. 194, 35 S. E. (2d) 184 (1945).

Statute authorizing bonds for State institutions.—Statute authorizing issuance of bonds for purposes of specified State institutions was held not invalid as violative of constitutional prohibition of enactment of special law where general law could be made applicable, in face of the contention that such statute did not affect all state-supported charitable institutions equally and hence was invalid. *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935).

Statute providing for audit of particular counties, offices, and institutions is not invalid as local or special law. *Spartanburg County v. Miller*, 135 S. C. 348, 132 S. E. 673 (1924).

Statute providing for management of county.—A statute authorizing the Charleston County council to make appropriations, levy taxes, incur indebtedness, issue bonds, exercise the power of eminent domain, supervise and regulate the various departments of the county, establish policies affecting the administrative employees of the county, and otherwise provide for the internal management of Charleston County does not contravene this provision. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Statute providing for vehicle license tax in one county is not invalid as special law where general law can be made applicable. *State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922).

Statute requiring cars to be equipped with fenders.—Statute requiring cars operating north of a line ten miles north of and parallel to the thirty-first meridian to be equipped with fenders, is not based upon arbitrary classification within this section when construed with reference to climatic conditions and the nature of the country. *Thomas v. Spartanburg Ry., Gas, etc., Co.*, 100 S. C. 478, 85 S. E. 50 (1915).

Statute taxing property in county for corporate purposes.—Each county in this State is a separate taxing district, and a statute providing for the levy of taxes on the property within a county for corporate purposes, while special in the sense that it imposes a tax limited in application to the property within such county, does not contravene this section of the Constitution prohibiting the enactment of a special law where a general law can be made applica-

ble. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

Tax law applicable only to one school district.—Like counties, the individual school districts are each separate taxing districts under S. C. Const., Art. 10, § 5, and a law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of this section. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

VIII. SPECIAL PROVISIONS IN GENERAL LAWS.

A. General Consideration.

Special provisions in general laws.—It is often a matter of difficulty to determine what is a special provision in a general law; but this cannot be construed so as to nullify the constitutional purpose to secure general laws having uniform operation, throughout the State, except in those cases where there is some logical basis and sound reason for special legislation. *State v. Burns*, 73 S. C. 194, 52 S. E. 960 (1906); *Gamble v. Clarendon County*, 188 S. C. 250, 198 S. E. 857 (1938); *Gillespie v. Pickens County*, 197 S. C. 217, 14 S. E. (2d) 900 (1941).

Amending prior general law by special provisions in statute.—In order to give fair effect to the proviso in subdiv. 10, it is held that although a statute containing "special provisions" may not in express terms purport to amend a prior general law on the same subject, yet such statute will be regarded as an amendment of the general law where, by necessary implication, such is its purpose and effect. *Gillespie v. Blackwell*, 164 S. C. 115, 161 S. E. 869 (1931).

Subdivision 9 does not apply to special provisions in general laws.—Subdivision 9 of this section, which prohibits the enactment of special laws in a case where a general law can be made applicable, does not apply to special provisions relating to particular counties contained in general laws. *Walker v. Harris*, 170 S. C. 242, 170 S. E. 270 (1933).

B. Acts Violative of Section.

Statutes prescribing how cotton seed shall be sold, but excepting from its application all but three of the counties of the State, are not general laws with "special provisions" therein authorized by this section and thus violate the Constitution. *Tisdale v. Scarborough*, 99 S. C. 377, 83 S. E. 594 (1914).

C. Acts Not Violative of Section.

Statute classifying cities with commission form of government.—In *Forde v. Owens*, 160 S. C. 168, 158 S. E. 147 (1931), a statute classifying cities adopting commission form of government was held constitutional, notwithstanding it contained some special provisions.

Statute creating high school district is special provision in general high school law and not invalid as local or special law. *Walpole v. Wall*, 153 S. C. 106, 149 S. E. 760 (1929).

Statute regarding election of school trustees.—Provisions of statute regarding election of school trustees are special provisions in the general law, and such special provisions may be enacted separately from the general law on the subject. *State v. Huntley*, 167 S. C. 476, 166 S. E. 637 (1932).

Statutes relating to public schools in Williamsburg County.—Sections 21-4201 to 21-4204 of the Code, relating to the operation of the public schools of Williamsburg County, are valid as special provisions in a general law and do not violate the provisions of this section. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

§ 35. Lands owned by aliens.

It shall be the duty of the General Assembly to enact laws limiting the number of acres of land which any alien or any corporation controlled by aliens may own within this State.

Quoted in *Tucker v. Atlantic Coast Lumber Co.*, 78 S. C. 134, 59 S. E. 859 (1907).

ARTICLE IV.

EXECUTIVE DEPARTMENT.

§ 1. Chief Magistrate.

The supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina."

See Const. 1868, Art. III, § 1.

Governor's declaration of state of insurrection is not enjoined.—The action of the Governor in declaring that a state of insurrection exists may not be enjoined by the Supreme Court nor reviewed by it. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

But his unlawful acts to suppress it are subject to judicial control.—The acts of the Governor, lawfully done in the suppression of an insurrection, are immune from interference by the Supreme Court. But when his acts exceed the authority given him by the Constitution and statutes, and are injurious to the personal liberty and prop-

erty rights of the citizens of the State, they are open to the inquiry and control of the judicial arm of the State. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

Legislature need not confer on Governor power to sign bonds.—The fact that this section has designated the Governor as the chief executive officer of the State does not require that the legislature confer upon him the power and duty to sign bonds which are authorized by the legislature. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Jurisdiction of Supreme Court to direct writ of certiorari to Governor.—*Rawlinson v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

§ 2. Election of Governor; State officers.

The Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for four years, and until his successor shall be chosen and qualified and shall be re-eligible. He shall be elected at the first general election held under this Constitution for members of the General Assembly, and at each general election thereafter, and shall be installed during the first session of the said General Assembly after his election, on such day as shall be provided by law. The other State

officers-elect shall at the same time enter upon the performance of their duties. *Provided*, That he shall not be eligible for re-election.

1924 (33) 1492; 1926 (34) 960.

See Const. 1868, Art. II, § 2.

§ 3. Qualifications of Governor.

No person shall be eligible to the office of Governor who denies the existence of the Supreme Being; or who at the time of such election has not attained the age of thirty years; and who shall not have been a citizen of the United States and a citizen and resident of this State for five years next preceding the day of election. No person while governor shall hold any office or other commission (except in the militia) under the authority of this State, or of any other power, at one and the same time.

See Const. 1868, Art. III, § 3.

Governor as ex officio member of State board.—Before the enactment of the present State intoxicating liquor laws, the dispensary act of 1895 made the Governor a member ex officio of the State board of con-

trol. This act was held not to violate this section. *State v. Potterfield*, 47 S. C. 75, 25 S. E. 39 (1896).

Cited in *State v. Town Council*, 39 S. C. 307, 17 S. E. 752 (1893).

§ 4. Boards of canvassers transmit returns of election for Governor; returns delivered to Speaker of House of Representatives; contested elections.

The returns of every election for Governor shall be sealed up by the Board of Canvassers in the respective Counties, and transmitted, by mail, to the seat of Government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly; and duplicates of said returns shall be filed with the Clerks of the Court of said Counties. It shall be the duty of any Clerk of Court to forward to the Secretary of State a certified copy of said returns upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been canvassed by the County Board, if the returns thereof from any County have not been received, to notify the Clerk of the Court of said County, and order a copy of the returns filed in his office to be forwarded forthwith. The Secretary of State shall deliver the returns to the Speaker of the House of Representatives, at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two Houses, the Speaker shall open and publish them in the presence of both Houses. The person having the highest number of votes shall be Governor; but if two or more shall be equal, and highest in votes, the General Assembly shall during the same session, in the House of Representatives, choose one of them Governor *viva voce*.

Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law.

See Const. 1868, Art. III, § 4.

Legislature's power to determine election results is limited.—In S. C. Const., Art. 3, § 11, and this section, the General Assembly is given the right in two cases to pass on

elections. In these two cases, and these only, is the General Assembly invested with the power to determine the result of any popular election. The General Assembly is not only not invested with any power to

determine the result of any other election, but it is forbidden to assume or exercise such a power in any other case by the terms of S. C. Const., Art. 1, § 14. *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898).

§ 5. Lieutenant Governor.

A Lieutenant Governor shall be chosen at the same time, in the same manner, continue in office for the same period and be possessed of the same qualifications as the Governor, and shall *ex officio*, be President of the Senate.

See Const. 1868, Art. III, § 5.

Cited in *Seegers v. Gibbes*, 72 S. C. 532, 52 S. E. 586 (1905); *State Co. v. Jones*, 99 S. C. 218, 82 S. E. 1048 (1914); *Bray v.*

City Council, 62 S. C. 57, 39 S. E. 810 (1901).

§ 6. Vote of Lieutenant Governor.

The Lieutenant Governor while presiding in the Senate, shall have no vote, unless the Senate be equally divided.

See Const. 1868, Art. III, § 6.

§ 7. President pro tempore of Senate.

The Senate shall, as soon as practicable after the convening of the General Assembly, choose a President pro tempore to act in the absence of the Lieutenant Governor, or when he shall fill the office of Governor.

See Const. 1868, Art. III, § 7.

§ 8. Member of Senate acting as Governor.

A member of the Senate acting as Governor or Lieutenant Governor shall thereupon vacate his seat and another person shall be elected in his stead.

See Const. 1868, Art. III, § 8.

§ 9. Vacancy in office of Governor; how filled.

In case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall then be Governor; and in case of the removal of the last named officer from his office by impeachment, death, resignation, disqualification, disability, or removal from the State, the President *pro tempore* of the Senate shall be Governor; and the last named officer shall then forthwith, by proclamation, convene the Senate in order that a President *pro tempore* may be chosen. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In case of the temporary disability of the Governor the Lieutenant Governor shall perform the duties of the Governor.

See Const. 1868, Art. III, § 9.

§ 10. Commander-in-Chief.

The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the active service of the United States.

See Const. 1868, Art. III, § 10.

§ 11. Pardons; Probation, Parole and Pardon Board.

The Governor shall have power to grant reprieves and to commute a sentence of death to that of life imprisonment. The granting of all other clemency to convicted persons shall be vested absolutely in a Probation, Parole and Pardon Board, composed of one member from each Congressional District to be appointed by the Governor by and with the advice and consent of the Senate for terms of twelve (12) years each. The members of the present Probation, Parole and Pardon Board shall constitute the first Probation, Parole and Pardon Board and the Governor shall designate one of said members to serve two (2) years, one four (4) years, one six (6) years, one eight (8) years, one ten (10) years and one twelve (12) years. The terms of office shall always remain staggered so that the term of office of one member shall expire every two (2) years, with appointments to fill vacancies caused by death, resignation or disability to be for the unexpired term. The Probation, Parole and Pardon Board shall grant pardons, issue paroles and admit to probation under such terms and conditions as it may determine, and a two-thirds (2/3) vote of all of its members shall be sufficient for action in any case. The Board shall submit to the Governor and the General Assembly annual reports giving in detail all action taken by it. The General Assembly shall enact appropriate legislation providing for a staff for the Board, defining the duties and powers of the Board not in conflict herewith and appropriating funds for its proper operation.

1948 (45) 2231; 1949 (46) 49.
See Const. 1868, Art. III, § 11.

For case construing power of Governor to grant reprieve prior to 1949 amendment, see *State v. Harrison*, 122 S. C. 523, 115 S. E. 746 (1923).

§ 12. Laws executed.

He shall take care that the laws be faithfully executed in mercy.
See Const. 1868, Art. III, § 12.

Stated in *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936). Cited in *State v. Floyd*, 174 S. C. 288, 177 S. E. 375 (1934).

§ 13. Compensation of Governor and Lieutenant Governor.

The Governor and Lieutenant Governor shall, at stated times, receive for their services compensation, which shall be neither increased nor diminished during the period for which they shall have been elected.
See Const. 1868, Art. III, § 13.

§ 14. Officers and boards report to Governor.

All officers in the Executive Department, and all Boards of public institutions, shall, when required by the Governor, give him information in writing upon any subject relating to the duties of their respective offices or the concerns of their respective institutions, including itemized accounts of receipts and disbursements.
See Const. 1868, Art. III, § 14.

§ 15. Information to legislature.

The Governor shall, from time to time, give to the General Assembly in-

formation of the condition of the State, and recommend for its consideration such measures as he shall deem necessary or expedient.

See Const. 1868, Art. III, § 15.

§ 16. Extra sessions; Governor may adjourn General Assembly.

He may on extraordinary occasions convene the General Assembly in extra Session. Should either House remain without a quorum for five days, or in case of disagreement between the two Houses during any session with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the time of the annual Session then next ensuing.

See Const. 1868, Art. III, § 16.

§ 17. Commissions.

He shall commission all officers of the State.

See Const. 1868, Art. III, § 17.

Failure to commission elected officer is immaterial.—While it is true that this section provides that the Governor shall commission all officers of the State, this is a mandate to him which, in the event of his neglect or failure or refusal to issue such commission, does not affect the right of a person duly elected to public office to discharge the duties of such office. There is no provision in the Constitution which expressly or impliedly forbids a person duly elected to office from performing the duties

of his office without first obtaining a commission. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Since issue of commission is mere ministerial act.—The Governor in issuing a commission acts merely ministerially. The commission does not confer the office, nor does the term or time for which it exists depend upon the commission, which is only evidence of the appointment or election. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

§ 18. Seal of State.

The seal of the State now in use shall be used by the Governor officially, and shall be called "The Great Seal of the State of South Carolina."

See Const. 1868, Art. III, § 18.

§ 19. Grants and commissions.

All grants and commissions shall be issued in the name and by the authority of the State of South Carolina, Sealed with the Great Seal, Signed by the Governor, and countersigned by the Secretary of State.

See Const. 1868, Art. III, § 19.

Cross reference.—As to commissioning of all officers of the State by the Governor, see S. C. Const., Art. 4, § 17.

Stated in *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

§ 20. Oath of Governor and Lieutenant Governor.

The Governor and Lieutenant Governor, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Article III, Section 26 of the Constitution.

See Const. 1868, Art. III, § 20.

§ 21. Residence of Governor.

The Governor shall reside at the Capital of the State, except in cases of contagion or the emergencies of war; but during the sittings of the General Assembly he shall reside where its sessions are held.

See Const. 1868, Art. III, § 21.

§ 22. Suspension of officers.

Whenever it shall be brought to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds, is probably guilty of embezzlement or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon true bill found the Governor shall suspend such officer and appoint one in his stead, until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

Cross references.—As to provisions for removal of officer for incapacity, misconduct, or neglect of duty, see note to S. C. Const., Art. 3, § 27. As to Governor's power of removal when grounds are insufficient for impeachment, see note to S. C. Const., Art. 15, § 4. As to powers of Governor to suspend magistrates for incapacity, misconduct, or neglect of duty, see § 43-3 of the Code. As to provisions for indictment and conviction of certain officers guilty of misconduct of an active nature, see § 50-8. As to provisions relating to Governor's power of appointing and removing county officers, see § 1-122. As to provisions for punishment for neglect of duty by clerk, see § 50-6.

Section empowers Governor to suspend officers.—This is the only general provision in the Constitution which confers upon the Governor the power of suspending officers. *State v. Hough*, 103 S. C. 87, 87 S. E. 436 (1915).

And it applies to removal of all officers except Governor.—This section applies to the removal of all officers, including magistrates, except the Governor, but is limited to the misconduct of embezzlement, and does not apply to other forms of misconduct, such as incapacity or neglect of duty. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

But Governor may not indefinitely suspend officers.—In *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936), the court held that if §§ 1-702 and 14-315 of the Code were open to the construction that they granted to the Governor the power of indefinite suspension of officers, without a hearing, such statutes would be against public policy and in the teeth of the manifest principles of this section of the Constitution.

Difference between suspension and removal of officers.—*Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

Suspension power is more restricted than removal power.—This section is hedged about with much greater restrictions than the power of removal, both as to the num-

ber and nature of offenses and as to the circumstances and conditions under which the power may be exercised. *State v. Hough*, 103 S. C. 87, 87 S. E. 436 (1915).

And legislature cannot enlarge Governor's power to suspend.—An act making subject to suspension from office by the Governor sheriffs who refuse or neglect to perform the duties required as to intoxicants was held to be unconstitutional, as this section negatives that it was intended that the Governor should exercise such power otherwise than provided. *State v. Hough*, 103 S. C. 87, 87 S. E. 436 (1915).

There are three prerequisites to officer's suspension.—This section prescribes three prerequisites to the Governor's power to suspend an officer: (1) the officer to be removed must have the custody of trust or public funds; (2) he must be probably guilty of embezzlement; and (3) there must be a true bill on the charge of embezzlement against the officer. *McMillan v. Bullock*, 53 S. C. 161, 31 S. E. 860 (1898); *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

General charge of misconduct is insufficient.—In a dissenting opinion to *State v. Ballentine*, 152 S. C. 365, 150 S. E. 46 (1929), *Cothran, J.*, argues, that this section makes no provision for the removal of a sheriff upon a general charge of "incapacity, misconduct, or neglect of duty", as it provides only for a special proceeding upon a particular charge of misconduct, the embezzlement of public or trust funds.

Funds within meaning of "public or trust funds".—The "funds appropriated by the legislature", spoken of in §§ 1-702 and 14-315 of the Code, are within the definition of "public or trust funds" spoken of in this section of the Constitution. *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

True bill and conviction are needed on charge less grave than embezzlement.—The conferring on the Governor by this section of the power to suspend officers for the grave offense of embezzlement, and that only on a true bill found, and providing that there shall be removal only after con-

viction, negatives the intention to bestow the larger power of removal without a true bill and without conviction on a charge less grave than embezzlement. *State v. Rhame*, 92 S. C. 455, 75 S. E. 881 (1912).

Suspension of magistrate for incapacity or misconduct.—The Governor may suspend a magistrate for incapacity, misconduct, or neglect of duty, but he must submit the suspension to the Senate for approval or disapproval. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

Appointee is entitled to immediate possession of books, papers, etc.—The person appointed as successor under this section is entitled to immediate possession of the

books, papers, etc., belonging to the office. He is not bound to await a judgment in his favor in an action to recover the office. *McMillan v. Bullock*, 53 S. C. 161, 31 S. E. 860 (1898).

Jurisdiction in suit to acquire books and papers.—To confer jurisdiction in summary proceedings to recover possession of books, papers, etc., belonging to an office by an appointee of the Governor under this section, the application must disclose the existence of all the constitutional facts giving the Governor jurisdiction to suspend the officer. *McMillan v. Bullock*, 53 S. C. 161, 31 S. E. 860 (1898).

§ 23. Bill or joint resolution must be signed or vetoed by the Governor.

Every Bill or Joint Resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approve he shall sign it; if not, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large on its Journal and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and if approved by two-thirds of that House it shall have the same effect as if it had been signed by the Governor; but in all such cases the vote of both Houses shall be taken by yeas and nays, and the names of the persons voting for and against the Bill or Joint Resolution shall be entered on the Journals of both Houses respectively.

Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and Sections. If the Governor shall not approve any one or more of the items or Sections contained in any Bill, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the Bill with his objections to the items or Sections of the same not approved by him to the House in which the Bill originated, which House shall enter the objections at large upon its Journal and proceed to reconsider so much of said Bill as is not approved by the Governor. The same proceedings shall be had in both Houses in reconsidering the same as is provided in case of an entire Bill returned by the Governor with his objections; and if any item or Section of Said Bill not approved by the Governor shall be passed by two thirds of each House of the General Assembly, it shall become a part of said law notwithstanding the objections of the Governor. If a Bill or Joint Resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting.

See Const. 1868, Art. III, § 22.

Section is considered with S. C. Const., Art. 3, § 12.—This section must be considered in conjunction with the provisions of S. C. Const., Art. 3, § 12. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Nature of executive's veto authority.—The constitutional authority of the executive to veto is in the nature of a legislative power. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943); *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

Two thirds of quorum of House may act.—Under this section, two thirds of a majority of each house, present in a lawfully constituted session, constitute a quorum to do business and are sufficient to pass a joint resolution over the Governor's veto. *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903).

And House may reconsider veto vote.—This section not expressly or by implication deny to the House the right to reconsider a veto vote. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Act not returned by Governor within three days becomes law.—The legislature passed an act and presented it to the Governor on that day. After he had not returned it within three days, although the legislature continued in session past the three-day time limit, the act became law as though signed on the third day after its presentation to the Governor under this section. *Goree v. Greenwood County Supervisor*, 93 S. C. 312, 76 S. E. 705 (1912); *Carolina Grocery Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381 (1901).

§ 24. Other State officers.

There shall be elected by the qualified voters of the State a Secretary of State, a Comptroller-General, an Attorney General, a Treasurer, an Adjutant and Inspector-General, and a Superintendent of Education, who shall hold their respective offices for the term of four years, and until their several successors have been chosen and qualified; and whose duties and compensation shall be prescribed by law. The compensation of such officers shall be neither increased nor diminished during the period for which they shall have been elected.

1924 (33) 1487; 1926 (34) 959.

See Const. 1868, Art. III, § 23.

Duties of these officers are to be fixed by General Assembly.—The duties of the State officers directed to be elected in this section are required to be specified by law, that is, by action of the General Assembly. They of course may be added to as the General Assembly may from time to time prescribe. *Evans v. Beattie*, 137 S. C. 496,

Joint resolutions are not within scope of section. — Joint resolutions proposing amendments to the Constitution of this State, agreed to by two thirds of the members elected to each House, do not fall within the purview of this section. *Kalber v. Redfearn*, 215 S. C. 224, 54 S. E. (2d) 791 (1949).

Appropriation item is void where veto sustained by House.—Where a bill appropriated money and divided the appropriation into several items, one of which was for salaries, which item the Governor vetoed with his veto being sustained by the House, it was held that there was no appropriation for such salaries. *State Co. v. Jones*, 99 S. C. 89, 82 S. E. 882 (1914).

Appropriation item is void where foreign to purpose of act.—A provision in an act authorizing the allocation of funds to the counties of the State for construction of health centers and hospitals, which provision stated money could also be used for other public uses, was held invalid because it was foreign to the manifest purpose of the act. *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

Act creating State Highway Commission does not violate section.—Act No. 831, 1936 Acts [1936 (39) 1557], creating a new State Highway Commission does not violate this section due to the House's reconsidering its vote and passing the act over the veto of the Governor. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

135 S. E. 538 (1926); *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Which may prescribe duties of county auditors.—Under this section, S. C. Const., Art. 10, § 13 and S. C. Const., Art. 11, § 4, the General Assembly has power to prescribe duties and powers of county auditors, county treasurers, and the State tax com-

mission. *Bank of Johnston v. Prince*, 136 S. C. 439, 134 S. E. 387 (1926); *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

And of Comptroller General.—While the office of Comptroller General is a creation of the Constitution, the duties of that official are prescribed by the General Assembly. *Bank of Johnston v. Prince*, 136 S. C. 439, 134 S. E. 387 (1926).

Valid act authorizing city stadium construction.—Act authorizing city to construct stadium was held not to contravene this section requiring duties of Attorney General to be prescribed by law because such act makes the Attorney General *ex officio*

bond commissioner of State and requires him to perform certain duties in connection with issuance of bonds by city. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Valid coastal highway act.—Coastal highway act was held not in violation of this section in requiring state officers to perform duties in connection with district. *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

Cited in *Parker v. Brown*, 195 S. C. 35, 10 S. E. (2d) 625 (1940); *Cooley v. South Carolina Tax Comm.*, 204 S. C. 10, 28 S. E. (2d) 445 (1943).

ARTICLE V.

JUDICIAL DEPARTMENT.

§ 1. Judicial power vested in certain courts.

The Judicial power of this State shall be vested in a Supreme Court, in two Circuit Courts, to wit: A Court of Common Pleas having civil jurisdiction and a Court of General Sessions with criminal jurisdiction only. The General Assembly may also establish County Courts, Municipal Courts and such Courts in any or all of the Counties of this State inferior to Circuit Courts as may be deemed necessary, but none of such Courts shall ever be invested with jurisdiction to try cases of murder, manslaughter, rape or attempt to rape, arson, common law burglary, bribery or perjury: *Provided*, Before a County Court shall be established in any County it must be submitted to the qualified electors and a majority of those voting must vote for its establishment.

See Const. 1868, Art. IV, § 1.

I. General Consideration.

II. Powers of General Assembly.

III. Municipal and Other Inferior Courts.

Cross Reference.

As to specific section providing for establishment of municipal courts in cities with population not less than 1,500 nor more than 20,000 persons, see § 15-1002.

I. GENERAL CONSIDERATION.

"Judicial power" referred to is that existing at time of Constitution.—This section assumed the existence of an organized society, and when it vested the judicial power in the courts, it had reference to the judicial power then existing and such as the people then understood to be vested in and exercised by the courts. *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 S. Ct. 293, 60 L. Ed. 658 (1916).

Such power is now divided among named State courts.—Under this section the Con-

stitution has divided the judicial power of the State among certain tribunals by name. *Salinas v. Aultman & Co.*, 49 S. C. 325, 27 S. E. 385 (1897).

Section provides only one court of common pleas for State.—In view of this section, there is but one court of common pleas for the entire State. *Ex parte Ware Furniture Co.*, 49 S. C. 20, 27 S. E. 9 (1897).

Which court is one of general jurisdiction.—*Ex parte Ware Furniture Co.*, 49 S. C. 20, 27 S. E. 9 (1897).

There is no provision in this section for a "court en banc." *Citizens' Bank v. Heyward*, 144 S. C. 365, 142 S. E. 651 (1926).

Cited in *State v. Brewer*, 38 S. C. 263, 16 S. E. 1001 (1893); *Anderson v. Seligman*, 85 S. C. 16, 67 S. E. 13 (1910); *Bradford v. Richardson*, 111 S. C. 205, 97 S. E. 58 (1918); *State v. Stanley*, 131 S. C. 513, 127 S. E. 574 (1925); *Best v. Barnwell County*, 114 S. C. 123, 103 S. E. 479 (1920).

II. POWERS OF GENERAL ASSEMBLY.

Legislature cannot take away jurisdiction conferred by S. C. Constitution.—When the Constitution confers jurisdiction upon a court, the legislature cannot take it away. *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919).

Upon court of common pleas.—The legislature cannot deprive the court of common pleas of jurisdiction in any civil case, nor of appellate jurisdiction in cases within the jurisdiction of magistrates' courts, except by providing for a direct appeal from these courts to the Supreme Court. *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919).

And it cannot create lien on debtor's property.—The judicial power vested in courts by this section includes the right to enforce and protect rights, prevent and redress wrongs, punish offenses against the public, and determine the rights, obligations, and liabilities of persons arising out of their relation to and dealings with each other. The legislature may not, even on the fullest, fairest, and most deliberate investigation, after due notice, pass an act declaring that an individual is indebted to the State in a given amount and by legislative fiat create a lien on his property. *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 S. Ct. 293, 60 L. Ed. 658 (1916).

But it may provide for county and "inferior courts."—The General Assembly has full power to provide not only for county courts but also for such courts inferior to circuit courts as it may deem necessary. While it is required that the question be submitted to the electors before a county court may be established in any county, such a vote is not necessary in the case of an "inferior court." *Holloway v. Holloway*, 203 S. C. 339, 27 S. E. (2d) 457 (1943).

A statute establishing civil and criminal court for portion of Oconee County was held not invalid under this section. *Glymph v. Smith*, 170 S. C. 486, 170 S. E. 913 (1933).

And fix territorial jurisdiction thereof.—There are no constitutional provisions that limit the power of the legislature to fix the territorial jurisdiction of such inferior courts as, in the circumstances, it may think proper, or that impose upon the lawmaking body the duty to make the territorial boundaries of such courts coincide with any political subdivision of the county. *Holloway v. Holloway*, 203 S. C. 339, 27 S. E. (2d) 457 (1943).

III. MUNICIPAL AND OTHER INFERIOR COURTS.

Creation of municipal courts is not subject of general law.—It is not the intention of the State Constitution to make the creation, jurisdiction, and incidents of a municipal court the subject of a "general law" which must be a law in force in every county in the State and which, while it may contain special provisions making its effect different in certain counties, cannot exempt them from its entire operation. Thus, a provision in an act providing a method of preparing and drawing jurors for the city of Columbia is valid. *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916).

And city council may establish municipal court.—Under this section, and S. C. Const., Art. 8, § 1, a statute declaring that it shall be lawful for the city council of a city to establish a municipal court is not void as an illegal delegation of powers. *Greenville v. Foster*, 101 S. C. 318, 85 S. C. 769 (1915).

But all municipal courts so established are inferior courts standing on practically the same footing as a justice court. *City Council v. Fowler*, 48 S. C. 8, 25 S. E. 900 (1896).

Definition of "inferior courts."—The term "inferior courts," as used in this section, is to be accepted as referring to the technical language usually employed to designate it. It is not to be understood as importing that it is inferior only because its judgments may be corrected by an appellate tribunal. *Grimball v. Parham Co.*, 96 S. C. 443, 81 S. E. 186 (1914).

Domestic relations court is an inferior court within the meaning of this section. A vote of the electors is not a prerequisite to its establishment in the county of Charleston. *Holloway v. Holloway*, 203 S. C. 339, 27 S. E. (2d) 457 (1943).

County court and inferior court distinguished.—The true test as to whether a court is a county court or an inferior court is not one of territory or the use of county officers, but whether it has, as is true of inferior courts, a special and limited jurisdiction. *Holloway v. Holloway*, 203 S. C. 339, 27 S. E. (2d) 457 (1943).

County court's jurisdiction covers entire county.—A county court must have jurisdiction covering the entire area of the county, but it does not at all follow that every court having county-wide jurisdiction is a county court. *Holloway v. Holloway*, 203 S. C. 339, 27 S. E. (2d) 457 (1943).

But cannot be exclusive over magistrates' appeals.—In view of this section and S. C. Const., Art. 5, §§ 15 and 23, an act creating a county court for a county, and purporting

to confer upon that court exclusive jurisdiction over appeals from magistrates' courts, is constitutional so far as it gives such court jurisdiction of such appeals and unconstitutional and void only so far as it attempts to make that jurisdiction exclusive. *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919).

Abolition of county court must be submitted to county electors.—Since this section of the Constitution requires submission to the county electors of the question of abolition of a county court to give the legislature power to abolish such court, reference to voters at democratic primary election did not confer such power. *Ansel v. Means*, 171 S. C. 432, 172 S. E. 434 (1934).

Clerk's jury in eminent domain proceedings may be court.—In view of the power

granted by this section, a clerk's jury organized as special statutory tribunal for initial ascertainment of amount of compensation in eminent domain proceedings may be established as a court. *Lexington Water Power Co. v. Wingard*, 150 S. C. 418, 148 S. E. 366 (1929).

Magistrates lack jurisdiction where title to land involved.—Magistrates, under this section, have no jurisdiction in cases where the title to land is in question or in cases in chancery. *Lewis v. Cooley*, 81 S. C. 461, 62 S. E. 868 (1908).

Section authorized city court of Charleston.—The creation of the city court of Charleston was authorized by the provisions of this section. *City Council v. Brown*, 42 S. C. 184, 20 S. E. 56 (1894).

§ 1-A. County court for Marlboro County.

A County Court is hereby established for the County of Marlboro with such civil jurisdiction as the General Assembly may provide. The judge shall be appointed by the Governor upon the recommendation of a majority of the Marlboro County Bar for a period of four years and until his successor is appointed and qualified. The jury shall consist of six as provided by Section 22 of Article 5, Constitution of 1895 for courts inferior to Circuit Courts. The General Assembly may also provide for a special judge to act in the place of the regular judge in case of his absence, inability to act or disqualification, such appointment to be made as provided for the appointment of a regular judge.

1950 (46) 3334; 1951 (47) 12.

§ 2. Supreme Court.

The Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. They shall be elected by a joint *viva voce* vote of the General Assembly for the term of ten years, and shall continue in office until their successors shall be elected and qualified, and shall be so classified, that one of them shall go out of office every two years.

See Const. 1868, Art. IV, § 2.

Section is mandatory.—The provisions of this section must be construed as being mandatory. *Mills v. Atlantic Coast Line R. Co.*, 87 S. C. 158, 69 S. E. 91 (1910).

And not retroactive.—The provision of the S. C. Constitution requiring the concurrence of three justices to reverse a circuit judge does not apply to a case decided below before the adoption of the S. C. Constitution of 1895 and argued in the Supreme Court before it was completed by election of a third associate justice contemplated by the Constitution. *Hunt v. Nolen*, 46 S. C. 551, 24 S. E. 543 (1896).

It did not create new tribunal.—Although the Supreme Court consisted of a chief justice and two associate justices, two of whom constituted a quorum when this Constitution went into effect, this section did not create a new tribunal and the Supreme Court continued as before, until the General Assembly elected the additional associate justice. *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896).

Quorum provisions are not restricted to temporary absences.—There is nothing in this section indicating an intention that the provision for a quorum should only apply

in case of a temporary absence of one of the members of the Court. The language used is equally applicable where the failure of such member to attend is occasioned by death as where it results from some temporary cause. *McAulay v. McAulay*, 96 S. C. 86, 79 S. E. 785 (1913).

Notes as to quorum under former constitution.—Under this section, when the Chief Justice is dead, the two associate justices constitute a quorum of the Court and are competent to exercise its powers. *Aultman v. Utsey*, 35 S. C. 596, 14 S. E. 289, 351 (1892); *Sullivan v. Speights*, 14 S. C. 358 (1880).

When the Chief Justice is dead, and when the disqualification of an associate justice by reason of his relationship to a party

causes the Governor to appoint another as justice to try and determine the cause, such acting justice and the other associate justice constitute a quorum of the Court and are competent to exercise its powers. *Williams v. Benet*, 35 S. C. 150, 14 S. E. 311 (1892).

Note as to filling vacancy under former Constitution.—A judge elected to fill a vacancy holds only for the unexpired term. *Simpson v. Willard*, 14 S. C. 191 (1880).

Stated in *Thomas v. Register*, 110 S. C. 173, 96 S. E. 517 (1918).

Cited in *Hutchinson v. Turner*, 88 S. C. 318, 70 S. E. 410, 806 (1911); *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

§ 3. Present Chief Justice and associate justices.

The present Chief Justice and Associate Justices of the Supreme Court are declared to be the Chief Justice and two of the Associate Justices of said Court as herein established until the terms for which they were elected shall expire, and the General Assembly at its next session shall elect the third Associate Justice and make suitable provision for accomplishing the classification above directed.

See Const. 1868, Art. IV, § 3.

Quoted in *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896).

§ 4. Jurisdiction of Supreme Court.

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other original and remedial writs. And said Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases where the facts are settled by a jury and the verdict not set aside, and shall constitute a Court for the correction of errors at law under such regulations as the General Assembly may by law prescribe.

See Const. 1868, Art. IV, § 4.

I. General Consideration.

II. Original Jurisdiction.

III. Jurisdiction in Chancery Cases.

IV. Jurisdiction in Law Cases.

Cross References.

As to original jurisdiction of Supreme Court, see § 15-121. As to appellate jurisdiction of Supreme Court in chancery, see § 15-122. As to appellate jurisdiction in law cases, see § 15-123. For other sections of the Code treating jurisdiction of Supreme Court, see §§ 15-124, 15-125, and 15-133 to 1-135. As to conclusive effect of findings of fact by the jury, see § 10-1457. As to commencing civil actions in courts of

record by service of summons, see § 10-401. As to authority of Governor to call out the militia, see §§ 44-114 and 44-115.

I. GENERAL CONSIDERATION.

Fundamental law is only limitation on power of courts.—In this State there is no limitation on the power of the courts to settle and decree the rights of litigants, save as prohibited by the fundamental law. *Matheson v. McCormac*, 186 S. C. 93, 195 S. E. 122 (1938).

Supreme Court may grant relief for which writ is remedy.—In view of this section, the Supreme Court may grant any relief for which writs are an appropriate remedy.

Hence, it may issue a writ of habeas corpus for the purpose of determining whether a person in custody may be admitted to bail. *State v. Farris*, 51 S. C. 176, 28 S. E. 308, 370 (1897).

And it may entertain original petition for mandamus and injunction. *Gilmer v. Hunnicutt*, 57 S. C. 166, 35 S. E. 521 (1900); *Carolina Grocery Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381 (1901).

It may determine whether conditions for injunction exist.—The Supreme Court may, under this section, determine whether the conditions exist which authorize the granting of an injunction, and grant the injunction if such conditions exist. *Trustees of University v. Trustees of Academy*, 85 S. C. 546, 67 S. E. 951 (1910).

But may issue injunction only to courts.—The Supreme Court is without jurisdiction to issue a writ of prohibition to a town council commanding it not to issue bonds as the writ is issuable, under this section, to courts only. *Hunter v. Moore*, 39 S. C. 394, 17 S. E. 797 (1893).

This section does not restrict the Supreme Court's power to issue writs of injunction to cases pending in such Court, either in its original or appellate jurisdiction. *Salinas v. Aultman & Co.*, 49 S. C. 325, 27 S. E. 385 (1897).

It disregards technical rules on appeal in capital case. *State v. Floyd*, 174 S. C. 288, 177 S. E. 375 (1934).

And may restrain collection of illegal tax.—The Supreme Court has power to restrain the collection of an illegal tax, notwithstanding § 65-2651, providing that the collection of taxes shall not be stayed or prevented by injunction, etc., where the legislature has not provided another adequate remedy for protection of the tax payer. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 58 S. E. 811 (1907); *Bank of Johnston v. Prince*, 136 S. C. 439, 134 S. E. 387 (1926).

But it lacks jurisdiction to determine naturalization petition.—*Ex parte McKenzie*, 51 S. C. 244, 28 S. E. 468 (1897).

And will not consider mandamus petition to collect unliquidated debt.—The Supreme Court in its original jurisdiction will not entertain a petition for mandamus for the collection of an unliquidated demand. *Wolfe v. Jessen*, 164 S. C. 1, 161 S. E. 927 (1931).

Court must enforce mandatory requirements as to appeal.—While a liberal construction should be given the S. C. Constitution and statutes in favor of the right of appeal, it is the Supreme Court's duty to enforce mandatory statutory requirements on which the privilege of appeal may be ex-

ercised, for under this section the Supreme Court is a court for the correction of errors of law under such regulations as the legislature may prescribe. *Rylee v. Marett*, 121 S. C. 366, 113 S. E. 483 (1922).

Single justice may issue writ.—A single justice of the Supreme Court has the power to issue a writ or order in the Court's original jurisdiction and make it returnable to the Court as a whole. *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

Section does not create "court en banc."—This section does not confer any jurisdiction upon a separate tribunal known as a "court en banc." *Citizens' Bank v. Heyward*, 144 S. C. 365, 142 S. E. 651 (1926), dis. op. of Cothran.

For additional related cases, as to certiorari to Governor, see *Rawlinson v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907).

Applied in *Dinkins v. Robbins*, 207 S. C. 77, 34 S. E. (2d) 478 (1945); *Aiken Petroleum Co. v. National Petroleum Underwriters*, 207 S. C. 236, 36 S. E. (2d) 380 (1945); *Little v. Little*, 215 S. C. 52, 53 S. E. (2d) 884 (1949).

Quoted in *Daniel v. Conestee Mills*, 183 S. C. 337, 191 S. E. 76 (1937).

Cited in *Redfean v. Douglass*, 35 S. C. 569, 15 S. E. 244 (1892); *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898); *State v. Charleston Light, etc., Co.*, 68 S. C. 540, 47 S. E. 979 (1904); *Tindal v. Sublett*, 82 S. C. 199, 63 S. E. 960 (1909); *Daughy v. Northwestern R. Co.*, 92 S. C. 361, 75 S. E. 553 (1912); *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927); *Walpole v. Wall*, 153 S. C. 106, 149 S. E. 760 (1929); *Bates v. Bates*, 213 S. C. 26, 48 S. E. (2d) 612 (1948).

II. ORIGINAL JURISDICTION.

Supreme Court may set aside suspension order of Governor.—Within the provisions of this section, the Supreme Court has original jurisdiction to set aside an order of the Governor which improperly suspended a member of the State Highway Commission. *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

And enjoin town treasurer from commingling certain funds.—The Supreme Court has jurisdiction to enjoin the clerk and treasurer of a town from mingling with general funds more than one half of sums paid town by State Highway Department under reimbursement act and from disbursing the remaining half to other than abutting property owners assessed for paying. *Little v. Conway*, 171 S. C. 27, 171 S. E. 447 (1933).

Governor's declaration of insurrection may not be enjoined.—The action of the Governor in declaring that a state of insurrection exists may not be enjoined or reviewed by the Supreme Court. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

But his acts relative to insurrection may be controlled.—Acts of the Governor, lawfully done in the suppression of an insurrection, are immune from interference by the Supreme Court. But when his acts exceed the authority given him by the S. C. Constitution and statutes and are injurious to the personal liberty and property rights of the citizens of the state, they are open to the inquiry and control of the judicial arm of the State. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

III. JURISDICTION IN CHANCERY CASES.

This section gives Supreme Court appellate jurisdiction in chancery cases. *Montgomery & Crawford v. Arcadia Mills*, 173 S. C. 464, 176 S. E. 589 (1934).

Where issues passed upon by circuit court.—Under this section, it is no part of appellate jurisdiction, under which there is a review of findings of fact as well as the law, to undertake to pass upon questions which were never passed upon by the circuit court. *Green v. Green*, 50 S. C. 514, 27 S. E. 952 (1897).

Both as to law and fact.—"Appellate jurisdiction" means full review of all phases of a case, both law and fact. The Supreme Court can affirm in whole, reverse in whole, or modify the decree of a circuit judge sitting as chancellor in an equity case. *Montgomery & Crawford v. Arcadia Mills*, 173 S. C. 464, 176 S. E. 589 (1934).

In equity causes the S. C. Constitution has laid no restrictions upon the power of the Supreme Court to hear appeals, both as to the law and the facts. *Ex parte Carolina Nat. Bank*, 56 S. C. 12, 33 S. E. 781 (1899), *dis. op.* of Pope, J.

The word "appellate", as used in this section, is intended to express the idea of full review of all phases of a case, both as to law and as to fact. *Sandel v. State*, 128 S. C. 178, 122 S. E. 571 (1922).

As a mandatory duty.—In chancery appeals the Supreme Court "shall review the findings of fact," which provision of this section very plainly confers the jurisdiction so to do and creates the corresponding duty. *Young v. Levy*, 206 S. C. 1, 32 S. E. (2d) 889 (1945).

In reviewing finding of facts, the Court must examine all testimony to ascertain if findings of fact in a chancery case are war-

ranted by the evidence. *Brown v. Newell*, 64 S. C. 27, 41 S. E. 835 (1902).

Facts in chancery case must be decided by preponderance of evidence.—This section requires the facts of a chancery case on appeal to be decided by a preponderance of the evidence, thereby abrogating the former rule that a decree will not be reversed unless it is without any testimony to support it or is manifestly against the overwhelming weight of the evidence. *Wagener v. Kirven*, 47 S. C. 347, 25 S. E. 130 (1896); *Sylvester-Bleckley Co. v. Goodwin*, 51 S. C. 362, 29 S. E. 3 (1898); *Pollock v. Carolina Interstate Bldg. & Loan Ass'n*, 51 S. C. 420, 29 S. E. 77 (1898); *Finley v. Cartwright*, 55 S. C. 198, 33 S. E. 359 (1899).

Circuit judge's findings should not influence Supreme Court.—There is no law or precedent which justifies the Supreme Court in abdication its prerogative and in avoiding its mandatory duty "to review the findings of fact as well as the law" in a chancery case by being influenced in the slightest degree by the findings of the circuit judge. *Cogswell v. Cannady*, 135 S. C. 365, 133 S. E. 834 (1926).

Evidence establishing cause of action may be ascertained.—In an equity case in reviewing finding of fact, the Court may ascertain whether there was any evidence to establish the essential elements of a cause of action. *Brown v. Volunteer State Life Ins. Co.*, 212 S. C. 537, 48 S. E. (2d) 507 (1948).

Demurrer may not be first raised in Supreme Court.—There is no authority vested in the Supreme Court to dispose of a demurrer interposed for the first time in the Supreme Court. *Green v. Green*, 50 S. C. 514, 27 S. E. 952 (1897).

IV. JURISDICTION IN LAW CASES.

Supreme Court is for correction of errors at law. *Hiers v. South Carolina Power Co.*, 198 S. C. 280, 17 S. E. (2d) 698 (1941).

Where such issues are raised below.—The Supreme Court cannot review or correct something that has not been decided or raised. *Hiers v. South Carolina Power Co.*, 198 S. C. 280, 17 S. E. (2d) 698 (1941).

Judge's fact findings are not reversed if supported by any evidence.—Under the provisions of this section of the Constitution, the Supreme Court cannot reverse findings of fact of circuit judge in law case if any evidence whatever supports findings. *Weston v. Morgan*, 162 S. C. 177, 160 S. E. 436 (1931).

This section does not require the Supreme Court to review the trial judge's findings of fact on conflicting evidence. Land

Mortgage, etc., Co. v. Faulkner, 45 S. C. 503, 23 S. E. 516, 24 S. E. 288 (1896).

There is no error of law if there is any evidence tending to support a finding by a circuit judge as to a juror's competency. *State v. Faries*, 125 S. C. 281, 118 S. E. 620 (1923).

And Court may not review correct fact findings by jury.—It is well settled that the Supreme Court has no power to review the correct findings of fact in a trial by jury. *Stuckey v. Atlantic Coast Line R. Co.*, 57 S. C. 395, 35 S. E. 550 (1900).

Since jury finding is conclusive unless set aside.—*Knobelock v. Germania Sav. Bank*, 50 S. C. 259, 27 S. E. 962 (1897).

Preponderance of evidence is question for jury, subject to judge's approval, and can-

not be decided by the Supreme Court. *Appleby v. Reserve Loan Life Ins. Co.*, 172 S. C. 42, 172 S. E. 776 (1934).

Trial court's failure to rule may not constitute error.—Where the record discloses that no ruling in any form was sought from or made by the trial court as to the alleged failure of evidence, no adequate basis is afforded for imputing to the trial court the commission of such error of law in that regard as the Supreme Court is bound to review or correct. *State v. Criddle*, 125 S. C. 264, 118 S. E. 424 (1923).

Rape prosecution is "law case" within this section governing the Supreme Court's reviewing power. *State v. Floyd*, 174 S. C. 288, 177 S. E. 375 (1934).

§ 5. Held twice a year at capital.

The Supreme Court shall be held at least twice in each year at the seat of government and at such other place or places in the State as the General Assembly may direct.

See Const. 1868, Art. IV, § 5.

Cited in *National City Bank v. Huey & Martin Drug Co.*, 113 S. C. 333, 102 S. E. 516 (1920).

§ 6. Disqualification of judges in certain cases; how vacancies filled; temporary appointments for holding circuit courts.

No Judge shall preside at the trial of any cause in the event of which he may be interested, or when either of the parties shall be connected with him by affinity, or consanguinity, within such degrees as may be prescribed by law, or in which he may have been counsel or have presided in any inferior Court. In case all or any of the Justices of the Supreme Court shall be thus disqualified, or be otherwise prevented from presiding in any cause or causes, the Court or the Justices thereof shall certify the same to the Governor of the State, and he shall immediately commission, specially, the requisite number of men learned in the law for the trial and determination thereof. The same course shall be pursued in the Circuit and inferior Courts as is prescribed in this Section for cases of the Supreme Court. The General Assembly shall provide by law for the temporary appointment of men learned in the law to hold either special or regular terms of the Circuit Courts whenever there may be necessity for such appointment.

See Const. 1868, Art. IV, § 6.

Purpose of section.—This section was not intended to provide anything with regard to elements necessary to constitute the Supreme Court, for that had already been done in S. C. Const., Art. 5, § 2. *McAulay v. McAulay*, 96 S. C. 86, 79 S. E. 785 (1913).

"Judge" in this section includes "magistrates."—*Marchbanks v. Marchbanks*, 58 S. C. 92, 36 S. E. 438 (1900).

Decree is voidable where rendered by judge within prohibited degree.—Decree rendered by judge related to defendant within the degree prohibited by this section is not void but merely voidable. *Sandel v. Crum*, 130 S. C. 317, 125 S. E. 919 (1924); *Jeffers v. Jeffers*, 89 S. C. 244, 71 S. E. 810 (1911).

But it is validated by consent of party or

attorney.—Where judge in mortgage foreclosure action was father of a defendant other than the mortgagor, and therefore related to defendant within this section, and such defendant, the plaintiff, and their attorneys consented to rendition of decree by such judge, and the mortgagor, the only other party to the suit, though personally served, made default, the decree was valid. *Sandel v. Crum*, 130 S. C. 317, 125 S. E. 919 (1924).

Right to object as to disqualification is waived after judgment.—Where a party to a probate proceeding knows that the judge is related to him and the other parties thereto, and makes no objection because of such relationship until after the judgment has been orally pronounced, he waives his right to object because of such disqualification. *Ex parte Hilton*, 64 S. C. 201, 41 S. E. 978 (1902).

Waiver of disqualification of probate judge.—Where a judge of probate, who was the present guardian of the plaintiff, entered a judgment against the prior guardian of this infant upon the prior guardian's accounting, the court held that the judgment against the prior guardian was binding upon her solely for the reason that she waived

the disqualification of the judge of probate to act in the accounting had before him when he was disqualified by reason of interest in the result of the cause. The court further held that the judge of probate was utterly without jurisdiction to make any ruling or finding which could in the remotest way affect the interest of any party or parties who had not joined in the waiver. *Lide v. Fidelity & Deposit Co.*, 179 S. C. 161, 183 S. E. 771 (1936).

Section sustains power to call special term of court of general sessions.—*State v. Gossett*, 117 S. C. 76, 108 S. E. 290 (1921).

For additional related case, see *In re Mears*, 75 S. C. 482, 56 S. E. 7 (1906).

Applied in *Haughton v. Order of United Commercial Travelers*, 108 S. C. 73, 93 S. E. 393 (1917); *Scroggie v. Bates*, 213 S. C. 141, 48 S. E. (2d) 634 (1948).

Cited in *Citizens' Bank v. Heyward*, 144 S. C. 365, 142 S. E. 651 (1926); *Ex parte Kreps*, 61 S. C. 29, 39 S. E. 181 (1901); *Williams v. Benet*, 35 S. C. 150, 14 S. E. 311 (1892); *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896); *State v. Davis*, 88 S. C. 204, 70 S. E. 417 (1911); *Winn v. Harby*, 166 S. C. 99, 164 S. E. 434 (1932).

§ 7. Reporter; clerk.

There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of said Court, who shall hold their offices for four years, and whose duties and compensation shall be prescribed by law.

See Const. 1868, Art. IV, § 7.

§ 8. Judgment of Supreme Court.

When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided, and the reason thereof shall be concisely and briefly stated in writing and preserved with the record of the case.

See Const. 1868, Art. IV, § 8.

Section requires specific exceptions.—Under this section an assignment of error quoting a part of the charge at length, and stating that the court charged on the facts, will not be considered on appeal as the same is too general. *State v. Meares*, 60 S. C. 527, 39 S. E. 245 (1901).

Appellant may abandon or group exceptions.—This section does not prevent the appellant from abandoning an exception or from grouping similar exceptions. *Wilcox v. Southern Ry. Co.*, 91 S. C. 71, 74 S. E. 122 (1912).

Supreme Court is not bound to formulate complicated points.—Under this section, where the points involved in an appeal were not formulated and classified so as to bring out the objections urged, but were stated in complicated divisions and subdivisions, consisting of general objections and repetition of objections, the Supreme Court was not bound to formulate them so that it could state its reason for overruling them. *Garrett v. Weinberg*, 59 S. C. 162, 37 S. E. 51, 225 (1900).

Applied in *Jones v. Charleston & N. C. R. Co.*, 65 S. C. 410, 43 S. E. 884 (1903).

§ 9. Compensation of judges and justices.

The Justices of the Supreme Court and Judges of the Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be increased or diminished during their continuance in office. They shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under this State, the United States, or any other power.

See Const. 1868, Art. IV, § 9.

Cross reference.—As to drawing money from the treasury only in pursuance of appropriations made by law, see S. C. Const., Art. 10, § 9.

Act cannot reduce previously fixed salary of judge.—Annual appropriation bill cannot reduce circuit judge's salary theretofore

fixed by continuing statute in effect at time of his election. *Grimball v. Beattie*, 174 S. C. 422, 177 S. E. 668 (1934).

Applied in *Stack v. Haigler*, 90 S. C. 319, 73 S. E. 354 (1912).

Cited in *Gaffney v. Mallory*, 186 S. C. 337, 195 S. E. 840 (1938).

§ 10. Qualifications.

No person shall be eligible to the office of Chief Justice, Associate Justice or Judge of the Circuit Court who is not at the time of his election a citizen of the United States and of this State, and has not attained the age of twenty six years, has not been a licensed attorney at law for at least five years, and been a resident of this State for five years next preceding his election.

See Const. 1868, Art. IV, § 10.

§ 11. Vacancies; conservators of the peace; unexpired term.

All vacancies in the Supreme Court or inferior tribunals shall be filled by elections as herein prescribed: *Provided*, That if the unexpired term does not exceed one year such vacancy may be filled by Executive appointment. All Judges, by virtue of their office, shall be conservators of the peace throughout the State; and when a vacancy is filled by either appointment or election, the incumbent shall hold only for the unexpired term of his predecessor.

See Const. 1868, Art. IV, § 11.

The true intent of the proviso to this section was simply to provide an exceptional mode of filling a vacancy in an exceptional case. *Smith v. McConnell*, 44 S. C. 491, 22 S. E. 721 (1895).

Section applies to elective judicial officers.

—This section, providing that vacancies in the Supreme Court or inferior tribunals shall be filled by elections, relates to elective judicial officers only. *State v. Bowden*, 92 S. C. 393, 75 S. E. 866 (1912).

And not to appointive officers.—This section has no application to magistrates, who are appointive officers. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

Vacancy in office of probate judge.—The proviso to this section, "that if the unexpired term does not exceed one year such vacancy may be filled by executive appointment," does not indicate that a vacancy in the office of the probate judge means the unexpired term of the officer by whose resignation the vacancy has been occasioned. *Smith v. McConnell*, 44 S. C. 491, 22 S. E. 721 (1895).

But for this proviso, no vacancy in the office of judge of probate could be filled by executive appointment, but must be filled by election. The real object of the proviso, therefore, was simply to provide for an exceptional case, and it was not intended to affect the general provisions in reference to all other cases made in the body of the section. In addition to this, the very fact that the framers of the Constitution saw fit to make special provision for an exceptional case shows that in all other cases not falling within such exception the general provision of the Constitution that all vacancies shall be filled by election "as herein prescribed," which election carried with it the right to hold the office for the full constitutional term of four years, applies. *Smith v. McConnell*, 44 S. C. 491, 22 S. E. 721 (1895).

Applied in *Thomas v. Register*, 110 S. C. 173, 96 S. E. 517 (1918).

Cited in *Williams v. Benet*, 35 S. C. 150, 14 S. E. 311 (1892).

§ 12. Three necessary for reversal; constitutional questions; trial judge shall not sit.

In all cases decided by the Supreme Court, the concurrence of three of the Justices shall be necessary for a reversal of the judgment below, subject to the provisions hereinafter prescribed. Whenever, upon the hearing of any cause or question before the Supreme Court, in the exercise of its original or appellate jurisdiction, it shall appear to the Justices thereof, or any three of them, that there is involved a question of constitutional law, or of conflict between the Constitution and Laws of this State and of the United States, or between the duties and obligations of her citizens under the same, upon the determination of which the entire Court is not agreed; or whenever the Justices of said court, or any two of them, desire it on any cause or question so before said court, the Chief Justice, or in his absence the presiding Associate Justice, shall call to the assistance of the Supreme Court all of the Judges of the Circuit Court: *Provided however*, That when the matter to be submitted is involved in an appeal from the Circuit Court, the Circuit Judge who tried the cause shall not sit. A majority of the Justices of the Supreme Court and Circuit Judges shall constitute a quorum. The decision of the Court so constituted, or a majority of the Justices and Judges sitting, shall be final and conclusive. In such case the Chief Justice, or in his absence, the presiding Associate Justice, shall preside. Whenever the Justices of the Supreme Court and the Circuit Judges meet together for the purposes aforesaid, if the number thereof qualified to sit constitute an even number, then one of the Circuit Judges must retire; and the Circuit Judges present shall determine by lot which of their number shall retire.

See Const. 1868, Art. IV, § 12.

- I. General Consideration.
- II. Court En Banc.
- III. Affirmance and Reversal.

I. GENERAL CONSIDERATION.

Construction of section.—In construing amendment to this section, to determine whether the language of the resolution declaring amendment or the language stating how the section should read as amended should control, the court will endeavor to ascertain the intention of the legislators submitting the amendment and the will of people voting favorably on it by considering the situation and conditions prior to amendment. *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

Applied in *Sandel v. State*, 128 S. C. 178, 122 S. E. 571 (1922); *Newton v. Woodley*, 55 S. C. 132, 32 S. E. 531, 33 S. E. 1 (1899); *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898); *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896).

II. COURT EN BANC.

Supreme Court justices and all circuit judges constitute court en banc.—*Duncan*

v. Record Pub. Co., 145 S. C. 196, 143 S. E. 31 (1927).

Court en banc is called only to decide constitutional issue.—Under this section as amended, it must appear to three justices of the Supreme Court that a question of constitutional law is involved in a pending cause to authorize calling the Court en banc, notwithstanding that a clause of a resolution for amendment, stating how section should read when amended, omitted the word "three." *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

Or grave question of public concern.—*Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

And not because Supreme Court is divided.—Where neither contingency occurs, the circuit judges will not be called in merely because the Supreme Court is divided and the parties desire an authoritative determination of the question involved. *Flourance v. Brown*, 49 S. C. 332, 26 S. E. 880, 27 S. E. 273 (1897).

The Supreme Court being divided upon a question of public policy and not upon a constitutional question, there is no ground upon which the circuit judges should be

called to the assistance of the Supreme Court upon a re-hearing. *Johnson v. Charleston & S. Ry. Co.*, 55 S. C. 152, 32 S. E. 2, 33 S. E. 174 (1899).

Privilege to call Court en banc is not given litigant.—Privilege of calling circuit judges to aid of Supreme Court, under this section, is entirely for Court and its justices, and is not a right given litigant. Thus Court and justices will call Court en banc when it is deemed advisable without petition or suggestion from party to pending cause, right of appeal not being vested one but matter of grace. *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

Court en banc is consultative court acting as Supreme Court.—Call for Court en banc, under this section, should be made while Supreme Court has pending before it and before it has determined a cause in which assistance of circuit judges is desired, since Court en banc is not independent court, but is called as consultative court and becomes for time being Supreme Court. *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

And its decision is conclusive.—Former decision of Supreme Court, sitting with circuit court judges as Court en banc regarding constitutionality of statute, is conclusive upon Supreme Court. *Williamson v. Richards*, 158 S. C. 534, 155 S. E. 890 (1930).

Thus, validity of bonds issued and sold in compliance with State highway bond act, declared constitutional by Supreme Court en banc, may not be considered, the former decision being binding. *Williamson v. Richards*, 158 S. C. 534, 155 S. E. 890 (1930).

§ 13. Judicial circuits; election of judges; present judges.

The State shall be divided into as many Judicial Circuits as the General Assembly may prescribe, and for each Circuit a Judge shall be elected by joint *visa voce* vote of the General Assembly, who shall hold his office for a term of four years; and at the time of his election he shall be an elector of a County of, and during his continuance in office he shall reside in, the Circuit of which he is Judge. The present Judges of the Circuit Courts shall continue in office until the expiration of the term for which they were elected, and should a new division of the judicial Circuits be made, shall be the Judges of the respective Circuits in which they shall reside after said division.

See Const. 1868, Art. IV, § 13.

County judges may be elected by people.—General Assembly has authority, under this section, to provide that county judges shall be elected by the people. *Thomas v. Register*, 110 S. C. 173, 96 S. E. 517 (1918).

The word "circuit" means a division of the county for judicial business. *State v. Mappus*, 107 S. C. 345, 92 S. E. 1053 (1917); *State v. Cooler*, 112 S. C. 95, 98 S. E. 845 (1919).

Where Supreme Court sitting en banc with judges of circuit court has filed its opinion, petition for rehearing cannot be entertained and determined, since opinion is final and conclusive under this section as between the parties to the proceedings, notwithstanding Court rule providing that a case shall not be remanded until the expiration of ten days after the filing of the opinion. *Citizens' Bank v. Heyward*, 144 S. C. 365, 142 S. E. 651 (1926).

Supreme Court sitting en banc loses jurisdiction when it has answered questions submitted by filing written decision signed by majority of justices and judges. *Citizens' Bank v. Heyward*, 144 S. C. 365, 142 S. E. 651 (1926).

III. AFFIRMANCE AND REVERSAL.

Concurrence of three judges is necessary for reversal.—It is necessary to have concurrence of three justices to reverse judgment below. *Hutchinson v. Turner*, 88 S. C. 318, 70 S. E. 410, 806 (1911).

But not for affirmance.—The Supreme Court is not without power to decide a case when there is a vacancy, though its decision can only be an affirmance, there being but two judges for reversal. *McAulay v. McAulay*, 96 S. C. 86, 79 S. E. 785 (1913).

Affirmance of judgment on other than constitutional question.—Under this section it is not necessary to call the Court en banc when the judges concur in affirming the judgment of the lower court on grounds other than a constitutional question. *Sturgiss v. Atlantic Coast Line R. R. Co.*, 80 S. C. 167, 60 S. E. 939, 61 S. E. 261 (1908).

Applied in *Truesdell v. Johnson*, 144 S. C. 188, 142 S. E. 343 (1928); *Thomas v. Register*, 110 S. C. 173, 96 S. E. 517 (1918); *Lamotte v. Smith*, 50 S. C. 558, 27 S. E. 933 (1897); *State v. Black*, 34 S. C. 194, 13 S. E. 361 (1891).

Cited in *State v. State Board of Canvasers*, 78 S. C. 461, 59 S. E. 145 (1907); *Grimball v. Beattie*, 174 S. C. 422, 177 S. E. 668 (1934).

§ 14. Interchange of circuits.

Judges of the Circuit Courts shall interchange Circuits with each other, and the General Assembly shall provide therefor.

See Const. 1868, Art. IV, § 14.

Applied in *State v. Thompson*, 122 S. C. 407, 115 S. E. 326 (1922).

Quoted in *Truesdell v. Johnson*, 144 S. C. 188, 142 S. E. 343 (1928); *Lamotte v. Smith*, 50 S. C. 558, 27 S. E. 933 (1897).

§ 15. Jurisdiction of courts of common pleas.

The Courts of Common Pleas shall have original jurisdiction, subject to appeals to the Supreme Court, to issue writs or orders of injunction, mandamus, habeas corpus, and such other writs as may be necessary to carry their powers into full effect. They shall have jurisdiction in all civil cases. They shall have appellate jurisdiction in all cases within the jurisdiction of inferior Courts, except from such inferior Courts from which the General Assembly shall provide an appeal directly to the Supreme Court.

See Const. 1868, Art. IV, § 15.

I. General Consideration.

II. Application of Section.

I. GENERAL CONSIDERATION.

In general.—In this State there is no limitation on the power of the courts to settle and decree rights of litigants, save as prohibited by the fundamental law. *Matheson v. McCormac*, 186 S. C. 93, 195 S. E. 122 (1938).

Jurisdiction under this section.—Where the Constitution confers jurisdiction upon a court, the legislature cannot take it away. Therefore the legislature cannot deprive the court of common pleas of jurisdiction in any civil case, nor of appellate jurisdiction in cases within the jurisdiction of magistrates' courts, except by providing for a direct appeal from these courts to the Supreme Court. *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919).

Coordinate jurisdiction with other courts.—A court of common pleas has equal and coordinate jurisdiction in all respects with any other like court of any other county, except as to territorial jurisdiction. *Fidelity Fire Ins. Co. v. Windham*, 134 S. C. 373, 133 S. E. 35 (1926).

Concurrent jurisdiction with county courts.—Since the legislature cannot deprive the court of common pleas of jurisdiction in civil cases or of appellate jurisdiction in cases within the jurisdiction of magistrates' courts, given to this section, the legislative power given by S. C. Const., Art. 5, § 1, to establish county courts may be exerted by conferring upon a county court established by the legislature concurrent jurisdiction with that invested in the court of common pleas, including, in view of S. C. Const., Art. 5, § 23, concurrent

jurisdiction over appeals from magistrates' courts. *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919).

Concurrent jurisdiction with court of probate.—Jurisdiction of court of probate in all matters testamentary, of administration, and in business appertaining to minors, allotment of dower, and insanity does not necessarily exclude jurisdiction of courts of common pleas under this section, which gives common pleas courts jurisdiction in all civil cases, and S. C. Const., Art. 5, § 19. *Muldrow v. Jeffords*, 144 S. C. 509, 142 S. E. 602 (1928).

Appellate jurisdiction of all cases within jurisdiction of probate court.—In the absence of legislative authority therefor, the court of common pleas has appellate jurisdiction of all cases within the jurisdiction of the probate court. *Ex parte Gregory*, 58 S. C. 114, 36 S. E. 433 (1900).

Applied in *Beatty v. National Sur. Co.*, 132 S. C. 45, 128 S. E. 40 (1925); *Bush v. Aldrich*, 110 S. C. 491, 96 S. E. 922 (1918); *Hand v. Kelly*, 102 S. C. 151, 86 S. E. 382 (1915); *Greenville College v. Board of Ed.*, 75 S. C. 93, 55 S. E. 132 (1906); *Hughes v. School District*, 66 S. C. 259, 44 S. E. 784 (1903); *Ex parte Evans*, 72 S. C. 547, 52 S. E. 419 (1907); *Wideman v. Patton*, 64 S. C. 408, 42 S. E. 190 (1902); *South Carolina & G. R. Co. v. American Tel. & Tel. Co.*, 63 S. C. 199, 41 S. E. 307 (1902); *Ex parte White*, 33 S. C. 442, 12 S. E. 5 (1890); *City Council v. Ashley Phosphate Co.*, 33 S. C. 25, 11 S. E. 386 (1890).

Quoted in *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

Stated in *Cobb v. South Carolina Nat. Bank*, 210 S. C. 533, 43 S. E. (2d) 465 (1947).

Cited in *State v. Ballentine*, 152 S. C. 365, 150 S. E. 46 (1929); *Spartanburg v. Cudd*, 132 S. C. 264, 128 S. E. 360 (1925); *Jones v. Enoree Power Co.*, 92 S. C. 263, 75 S. E. 452 (1912); *Trustees of University v. Trustees of Academy*, 85 S. C. 546, 67 S. E. 951 (1910); *State v. Bowman*, 66 S. C. 140, 44 S. E. 569 (1903); *Segars v. Parrot*, 54 S. C. 1, 31 S. E. 677, 865 (1898); *Ex parte Ware Furniture Co.*, 49 S. C. 20, 27 S. E. 9 (1897); *McCreery v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895); *City Council v. Weller*, 34 S. C. 357, 13 S. E. 628 (1891).

II. APPLICATION OF SECTION.

Section does not apply to appeals from Industrial Commission.—This section and §§ 72-356 and 7-301, providing for appeal to the circuit court from inferior courts and decisions under them, are not pertinent to appeals from the Industrial Commission for the simple reason that the latter is not a court in the constitutional and statutory sense. And by the same token, the authority of those decisions is not impinged upon by the construction and application of the Workmen's Compensation Act to controversies within its sphere. *Schwartz v. Mount Vernon—Woodberry Mills*, 206 S. C. 227, 33 S. E. (2d) 517 (1945); *Willow Consolidated High School District v. Union School District*, 216 S. C. 445, 58 S. E. (2d) 729 (1950).

Nor to appeals from county board of education.—A county board of education is not an inferior court within the meaning of this section of the Constitution. *Willow Consolidated High School District v. Union School District*, 216 S. C. 445, 58 S. E. (2d) 729 (1950).

Jurisdiction of claim for damages for lynching.—Claim for damages for lynching is within the jurisdiction of court of common pleas and not of county board, and hence is not barred by rejection by board. *Best v. Barnwell County*, 114 S. C. 123, 103 S. E. 479 (1920).

Jurisdiction of "will or no will" issue.—Court of common pleas has jurisdiction of issue of "will or no will" presented upon

stipulation waiving trial before probate judge in view of this section and S. C. Const., Art. 5, § 19. *Muldrow v. Jeffords*, 144 S. C. 509, 142 S. E. 602 (1928).

Statute providing for review of issue of "will or no will" contemplates trial de novo, and practically confers jurisdiction on court of common pleas in view of this section and S. C. Const., Art. 5, § 19. *Muldrow v. Jeffords*, 144 S. C. 509, 142 S. E. 602 (1928).

Jurisdiction to annul marriages.—The court of common pleas is not only expressly authorized by statute to annul a marriage, but, apart from the statutory provisions, the power to do so may be asserted with confidence under the jurisdiction conferred on that court by this section of the Constitution. *Everly v. Baumil*, 209 S. C. 287, 39 S. E. (2d) 905 (1946).

Jurisdiction to declare void marriages prohibited by statute.—*Davis v. Whitlock*, 90 S. C. 233, 73 S. E. 171 (1911).

Jurisdiction over appeals from magistrates' courts.—In view of this section and S. C. Const., Art. 5, §§ 1 and 23, an act creating a county court for Richland County, purporting to confer upon that court exclusive jurisdiction over appeals from magistrates' courts, is constitutional so far as it gives such court jurisdiction of such appeals, and is unconstitutional and void only so far as it attempts to make that jurisdiction exclusive. *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919).

Concurrent jurisdiction with probate court in suits for accounting.—Under this section, conferring jurisdiction upon the court of common pleas in "all civil cases," its jurisdiction with that of the probate court in suits against administrators for accounting is concurrent. *Epperson v. Jackson*, 83 S. C. 157, 65 S. E. 217 (1909).

Attack on jurisdiction for lack of process.—Parties waiving trial in probate court and submitting issue to court of common pleas could not attack jurisdiction for lack of process in view of this section and S. C. Const., Art. 5, § 19. *Muldrow v. Jeffords*, 144 S. C. 509, 142 S. E. 602 (1928).

§ 16. Sit twice.

The Court of Common Pleas shall sit in each County in this State at least twice in every year at such stated times and places as may be appointed by law.

See Const. 1868, Art. IV, § 16.

Only one court is provided.—There is provided but one court of common pleas for the entire State. *Ex parte Ware Furniture Co.*, 49 S. C. 20, 27 S. E. 9 (1897).

Applied in *Haughton v. Order of United Commercial Travelers*, 108 S. C. 73, 93 S. E. 393 (1917).

§ 17. Decisions; when filed.

It shall be the duty of the Justices of the Supreme Court to file their decisions within sixty days from the last day of the Court at which the cases were heard; and the duty of the Judges of the Circuit Courts to file their decisions within sixty days from the rising of the last Court of the Circuit then being held.

See Const. 1868, Art. IV, § 17.

Delay caused by act of court does not invalidate decision.—A decision filed after the expiration of sixty days will not be invalid if the delay is caused by act of the Court and not by the laches of the parties. *Griffith v. Cromley*, 58 S. C. 448, 36 S. E. 738. (1900).

Jurisdiction of special judge continues until opinion filed.—Jurisdiction of special judge who reserves his decision continues until he files his opinion in the cause, regardless of the provisions of this section,

and judgment of the circuit court filed three months after adjournment of court will not be overthrown because the record contained a statement that the whole case was heard by the judge in open court during term time. *Newbold v. McCrorey*, 103 S. C. 299, 87 S. E. 542, 1103 (1916).

Applied in *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

Cited in *National City Bank v. Huey Martin Drug Co.*, 113 S. C. 333, 102 S. E. 516 (1920).

§ 18. Court of general sessions.

The Court of General Sessions shall have jurisdiction in all criminal cases except those cases in which exclusive jurisdiction shall be given to inferior Courts, and in these it shall have appellate jurisdiction. It shall also have concurrent jurisdiction with, as well as appellate jurisdiction from, the inferior Courts in all cases of riot, assault and battery, and larceny. It shall sit in each County in the State at least twice in each year at such stated times and places as the General Assembly may direct.

See Const. 1868, Art. IV, § 18.

Preliminary examination of accused does not violate section.—Section 43-232 of the Code, which provides for preliminary examination by a magistrate when demanded by the person accused of crime, does not contravene this section of the Constitution. *State v. Flintroy*, 178 S. C. 89, 182 S. E. 311 (1935).

And this is true of act requiring notice of dismissal of death sentence appeal.—Act requiring Supreme Court clerk to notify Penitentiary superintendent of dismissal of appeal suspending execution of death sentence was held not unconstitutional as depriving court of general sessions of jurisdiction to pronounce sentence and as depriving defendant of right to make other motions. *Ex parte Howell*, 168 S. C. 197, 167 S. E. 230 (1932).

Court may remit offense to magistrate's court for trial.—Where the court of general sessions, being a court of general jurisdiction, and the magistrate's court, being a court of limited jurisdiction, have concurrent jurisdiction of the offense of carrying a concealed deadly weapon, it is not error for the court of general sessions to remit such an offense to the magistrate's court

for trial. *State v. McClenton*, 59 S. C. 226, 37 S. E. 819 (1901).

Jurisdiction of indictment for larceny.—The court of general sessions has jurisdiction of an indictment for the larceny of property where the value thereof is less than \$5.00. *State v. Crosby*, 51 S. C. 247, 28 S. E. 529 (1898).

Jurisdiction of indictment for obstructing public road.—The court of general sessions has concurrent jurisdiction with the magistrate's court of one indicted for willfully obstructing and closing the public road by erecting a house thereon. *State v. Wolfe*, 61 S. C. 25, 39 S. E. 179 (1901).

Jurisdiction of indictment for receiving stolen goods.—Where a defendant was tried before a court of general sessions upon an indictment for receiving stolen goods, inter alia, and the jury found a verdict of guilty and also found that the property stolen and received was of the value of \$18, the court of general sessions had no jurisdiction to enter a sentence for the magistrate's court has exclusive jurisdiction where punishment does not exceed a fine of \$100 or imprisonment for 30 days. This decision was reached in view of this section, S. C. Const.,

Art. 5, § 21, and pertinent statutes of the Code. *State v. Brown*, 201 S. C. 417, 23 S. E. (2d) 381 (1942).

For additional related cases, see *State v. Langford*, 55 S. C. 322, 33 S. E. 370 (1899); *State v. Gallman*, 79 S. C. 229, 60 S. E. 682 (1908).

Stated in *State v. Morelli*, 107 S. C. 262, 92 S. E. 475 (1917); *State v. Jenkins*, 26 S. C. 121, 1 S. E. 437 (1887); *State v. Hampton*, 106 S. C. 275, 91 S. E. 314 (1917).

Cited in *State v. Stanley*, 131 S. C. 513, 127 S. E. 574 (1925).

§ 19. Court of probate.

The Court of Probate shall remain as now established in the County of Charleston. In all other Counties of the State the jurisdiction in all matters testamentary and of administration, in business appertaining to minors, and the allotment of dower, in cases of idiocy and lunacy, and persons non compos mentis, shall be vested as the General Assembly may provide, and until such provision such jurisdiction shall remain in the Court of Probate as now established.

See Const. 1868, Art. IV, § 20.

Probate court is not a constitutional court. *Bradford v. Richardson*, 111 S. C. 205, 97 S. E. 58 (1918).

Jurisdiction of probate court.—The court of probate in South Carolina has only such jurisdiction as is vested in it by the General Assembly and limited by this section of the Constitution. *Davis v. Davis*, 214 S. C. 247, 52 S. E. (2d) 192 (1949).

Is subject to legislative change.—The legislature may vest the jurisdiction formerly exercised by the probate court, or any part of it, in other courts as it may deem expedient. This power necessarily includes the power to abolish the court entirely, and consequently the power to invest it with such jurisdiction as the legislature may see fit, not inconsistent with other provisions of the Constitution. *Bradford v. Richardson*, 111 S. C. 205, 97 S. E. 58 (1918).

Even though its constitutional jurisdiction cannot be destroyed.—This section gives the probate court jurisdiction "in all matters testamentary," and its constitutional jurisdiction cannot be destroyed. *Hand v. Kelly*, 102 S. C. 151, 86 S. E. 382 (1915) dis. op. of Fraser, J.

Section provides jurisdiction over mental competence issue.—This section is the source of jurisdiction of a probate proceeding adjudging the mental competence of a person. *Cobb v. South Carolina Nat. Bank*, 210 S. C. 533, 43 S. E. (2d) 465 (1947).

Probate court has no exclusive jurisdiction of matters testamentary.—Under this section, probate court has not exclusive jurisdiction excluding judicial inquiry by court of common pleas into matters testamentary or of administration, when subject matter of such inquiry is not already res judicata by virtue of judgment of court of

probate. *Beatty v. National Sur. Co.*, 132 S. C. 45, 128 S. E. 40 (1925).

Provided action is not already pending in probate court.—Court of common pleas will decline to entertain jurisdiction of matters embraced in action already pending in probate court. *Beatty v. National Sur. Co.*, 132 S. C. 45, 128 S. E. 40 (1925).

A probate judge can require the general guardian of a minor to give a new bond when such guardian is about to receive funds not in contemplation when the original bond was executed. *Williams v. Weeks*, 70 S. C. 1, 48 S. E. 619 (1904).

Probate judge as public guardian.—Acting as public guardian is a new duty imposed by the legislature upon the judge of probate, is merely incidental to his office, and does not create a new office. *State v. Green*, 52 S. C. 526, 30 S. E. 1006 (1898); *State v. Green*, 52 S. C. 520, 30 S. E. 683 (1898).

Failure to serve notice of inquisition on lunatic when appointing committee.—The validity of a decree of a probate court appointing a committee for a lunatic was not affected by the fact that the lunatic was not served with notice of the inquisition. *Cathcart v. Hopkins*, 119 S. C. 190, 112 S. E. 64 (1922).

Appeal from decree of insanity.—Certiorari will not lie to a decree of the probate court declaring a person to be of unsound mind, but appeal is the proper remedy. *Ex parte Gregory*, 58 S. C. 114, 36 S. E. 433 (1900).

Applied in *Muldrow v. Jeffords*, 144 S. C. 509, 142 S. E. 602 (1928); *McNair v. Howle*, 123 S. C. 252, 116 S. E. 279 (1923); *Hendrix v. Holden*, 58 S. C. 495, 36 S. E. 1010 (1900).

§ 20. Magistrates; term of office; constables; salary.

A sufficient number of Magistrates shall be appointed and commissioned by the Governor, by and with the advice and consent of the Senate, for each County, who shall hold their offices for the term of two years and until their successors are appointed and qualified. Each Magistrate shall have the power under such regulations as may now or hereafter be provided by law, to appoint one or more Constables to execute writs and processes issued by him. The present trial Justices are declared Magistrates as herein created and shall exercise the powers and duties of said office of Magistrate until their successors shall be appointed and qualified. Each Magistrate shall receive a salary, to be fixed by the General Assembly, in lieu of all fees in criminal cases. *Provided, however,* that in the Counties of Aiken and Hampton the Magistrates shall hold their office for a term of four years and until their successors are appointed and qualified.

1944 (43) 1571; 1946 (44) 1323.

Provided, further, That, in the County of Berkeley, Magistrates shall hold office for a term of four (4) years and until their successors are appointed and qualified.

1947 (45) 867; 1949 (46) 15.

Provided, that in the county of Florence the magistrates shall hold their offices for the term of four years and until their respective successors are appointed and qualified.

1949 (46) 1207; 1951 (47) 38.

Provided, that in the county of Richland the Magistrates shall hold their offices for the term of four years and until their respective successors are appointed and qualified.

1949 (46) 1560; 1951 (47) 74.

See Const. 1868, Art. IV, § 21.

Section guarantees salary of magistrate.

—The office of magistrate is a constitutional one, and the salary of magistrates is guaranteed by this section of the Constitution. *Gaffney v. Mallory*, 186 S. C. 337, 195 S. E. 840 (1938).

Magistrate must be appointed by Governor.—A statute calling for "election" of a candidate for magistrate was construed to mean "nomination" of a candidate and constituted a mere suggestion to the Governor which could be ignored, since this section of the Constitution requires appointment of the magistrate by the Governor. *Young v. Sapp*, 167 S. C. 364, 166 S. E. 354 (1932).

With consent and advice of Senate.—*State v. Bowden*, 92 S. C. 393, 75 S. E. 866 (1912).

This section is not inconsistent with S. C. Const., Art. 1, § 11. Prior to the adoption of the Constitution of 1895, offices in this state might be held during good behavior. The purpose of S. C. Const., Art. 1, § 11, was to change this rule and make the term a limited one so as to make office holders more amenable to the elective or appointive

power. It would be most unreasonable to impute to the constitutional convention a purpose to give to the expression, "some specified period," a meaning so narrow as to prohibit any legislative provision against the inconvenience arising from vacancies in public office, which would occur if the incumbent could not be allowed to hold office until the appointment or election and qualification of his successor. Such a construction of the Constitution is impossible. The convention could not have meant to prohibit itself and the General Assembly from doing that which it later in the same Constitution actually did in providing that the Governor and the justices of the Supreme Court should hold their office for the number of years mentioned and until their successors should be elected and qualified, and that magistrates should hold their offices for two years and until their successors should be appointed, confirmed, and should qualify. *State v. Bowden*, 92 S. C. 393, 75 S. E. 866 (1912).

Trial justices were continued in office as magistrates.—Trial justices were continued

in office upon the adoption of the Constitution of 1895 under the name of magistrates, with all the powers and duties previously belonging to the office of trial justice. In re Hooper, 48 S. C. 149, 26 S. E. 466 (1897).

Magistrate may appoint regular constable.—Section 43-1014, allowing the appointment or designation of a constable by the Senator of Spartanburg County, is unconstitutional under this section insofar as it takes away from the magistrate the right to appoint his own constable and gives the constable appointed by the Senator the right to serve all papers issued by the magistrate

and collect fees, whether the constable served the papers or not. Harrison v. Lancaster, 204 S. C. 318, 28 S. E. (2d) 835 (1944).

And also special constables.—A magistrate may appoint a special constable for a particular occasion. Cromer v. Watson, 59 S. C. 488, 38 S. E. 126 (1901).

Applied in Columbia v. Smith, 105 S. C. 348, 89 S. E. 1028 (1916).

Stated in McDowell v. Burnett, 90 S. C. 400, 73 S. E. 782 (1912).

Cited in Carlisle v. Prior, 48 S. C. 183, 26 S. E. 244 (1897).

§ 21. Jurisdiction of magistrates; examining courts.

Magistrates shall have jurisdiction in such civil cases as the General Assembly may prescribe: *Provided*, Such jurisdiction shall not extend to cases where the value of property in controversy, or the amount claimed, exceeds one hundred dollars, or to cases where the title to real estate is in question, or to cases in chancery. They shall have exclusive jurisdiction in such criminal cases as the General Assembly may prescribe: *Provided, further*, Such jurisdiction shall not extend to cases where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days. In criminal matters beyond their jurisdiction to try, they shall sit as Examining Courts, and commit, discharge, or, except in capital cases recognize, persons charged with such offences, subject to such regulations as the General Assembly may provide. They shall also have the power to bind over to keep the peace and for good behavior for a time not to exceed twelve months.

Provided, That in the County of Sumter, jurisdiction of magistrates in civil cases shall extend to where the value of property in controversy or the amount claimed is not more than Two Hundred (\$200.00) Dollars, except in the Third Magisterial District, where the amount shall not exceed One Thousand (\$1,000.00) Dollars.

1932 (37) 1399; 1933 (38) 586.

Provided, further, That in addition to the jurisdiction conferred by this Constitution upon magistrates in Anderson County, any magistrate or magistrates residing in the City of Anderson, or within seven (7) miles of the corporate limits of said City, who are licensed to practice law in this State and who have been actively engaged in the practice of law in this State for a period of two (2) years shall have the same jurisdiction as the Court of Common Pleas and the judges thereof and concurrent therewith in all cases in law and equity, special proceedings and remedial remedies, where the value of the property in controversy or the amount claimed does not exceed the sum of One Thousand (\$1,000.00) Dollars, to issue and hear writs of habeas corpus to determine the custody of minor children: *Provided, however*, They shall not have jurisdiction in any case where the title to real estate is involved, and such magistrate or magistrates shall have jurisdiction in such criminal cases as the General Assembly may prescribe, but such jurisdiction shall not extend to cases where the punishment exceeds a fine of Five Hundred

(\$500.00) Dollars and/or imprisonment for eighteen (18) months, (either or both) with or without hard labor, except, however, such jurisdiction in criminal cases may be extended by the General Assembly to include any and all violations of the laws relating to intoxicating and/or alcoholic liquors, cases charging non-support of wife and/or child or children, bastardy, drawing and uttering fraudulent check, driving motor vehicle under the influence of intoxicating liquor, and disposing of property under lien, and in such cases said magistrates shall have the power to impose such sentences as are provided by law for such offences. The said magistrates having the additional jurisdiction herein provided, may be designated special magistrates, County Judges, or by such other title as the General Assembly may prescribe. The manner of selecting jurors to serve said magistrates in exercising such additional jurisdiction and the area from which such jurors are selected, may be as the General Assembly shall prescribe.

1934 (38) 1627; 1935 (39) 341; 1946 (44) 1822; 1947 (45) 34.

Provided, that the General Assembly may increase the jurisdiction of any magistrate in Darlington County who is licensed to practice law in this State, to civil cases where the value of the property in controversy, or the amount claimed, does not exceed One Thousand Dollars (\$1,000.00).

1950 (46) 2980; 1951 (47) 223.

See Const. 1868, Art. IV, §§ 22, 23.

- I. General Consideration.
- II. Application of Section.

Cross Reference.

As to jurisdiction of the court of general sessions, see S. C. Const., Art. 5, § 18.

I. GENERAL CONSIDERATION.

Jurisdiction of magistrates is fixed by the Constitution and statutes enacted pursuant thereto. Clemmons v. Nicholson, 188 S. C. 124, 198 S. E. 180 (1938).

And extends throughout county in absence of restriction.—As the General Assembly has not restricted territorial jurisdiction of magistrates in Greenville County concerning civil actions, such jurisdiction extends throughout the county. Baker v. Irvine, 61 S. C. 114, 39 S. E. 252 (1901).

Against all defendants subject to process or who voluntarily appear. — Best v. Seaboard, etc., Ry., 72 S. C. 479, 52 S. E. 223 (1905).

Where summons is issued to divide crop and it is agreed that proceeding be treated as action to recover amount of laborer's wages, measured by value of one half of crop less laborer's debt to landlord, the appearance of the parties gives magistrate jurisdiction of whole matter. Wilkie v. Murphy, 88 S. C. 415, 70 S. E. 1028 (1911).

Burden is on plaintiff to establish jurisdiction.—Stroy v. Nicpee, 105 S. C. 265, 89 S. E. 666 (1916).

And he may reduce claim to bring it within jurisdiction.—It is no objection to the jurisdiction of a trial justice that plaintiff reduce his demand to bring it within the amount over which the justice has jurisdiction. Catawba Mills v. Hood, 42 S. C. 203, 20 S. E. 91 (1894).

But fictitious claim may not be made.—Under this section, a party cannot put a fictitious value on property in order to confer jurisdiction. Stroy v. Nicpee, 105 S. C. 265, 89 S. E. 666 (1916).

This section includes suits against corporations. Dennis v. Atlantic Coast Line R. Co., 86 S. C. 258, 68 S. E. 465 (1910).

Including foreign corporations. — This section gives a magistrate jurisdiction of an action against a foreign corporation having property in the State to recover a penalty by due service of summons. Best v. Seaboard, etc., Ry., 72 S. C. 479, 52 S. E. 223 (1905).

Action must not be equitable in nature.—Where proof showed that plaintiff and defendant in an action of claim and delivery were joint owners, their rights, equitable in nature, could not be administered in a magistrate's court in view of this section. Driggers v. Cannon, 107 S. C. 322, 92 S. E. 1049 (1917).

Penalty for offense must be fixed. — A magistrate's court has no jurisdiction as to an obstruction of a highway or neighborhood road, an indictable offense under the

common law, where the penalty therefor has not been limited. *State v. Mellette*, 106 S. C. 224, 91 S. E. 4 (1916).

Within constitutional limits.—Magistrate's court has exclusive jurisdiction where fine is not over \$100. *State v. Brown*, 201 S. C. 417, 23 S. E. (2d) 381 (1942).

Or amount claimed must be within constitutional limits.—An action for possession of chattels of the value of \$100, and for \$75 damages, or, if they cannot be returned, for a judgment for \$175, is under this section in excess of the jurisdiction of a magistrate. *Reynolds v. Philips*, 72 S. C. 32, 51 S. E. 523 (1905).

Judgment is not reversed where basis for finding exists.—Judgment will not be reversed where evidentiary basis for trial judge's finding exists and the conclusion is correct. *Stewart-Jones Co. v. Shehan*, 127 S. C. 451, 121 S. E. 374 (1924).

For additional related cases, see *State v. Wolfe*, 61 S. C. 25, 39 S. E. 179 (1901); *Burckhalter v. Jones*, 58 S. C. 89, 36 S. E. 495 (1900); *Dill v. Durham*, 56 S. C. 423, 35 S. E. 3 (1900); *State v. Adams*, 49 S. C. 518, 27 S. E. 523 (1897); *State v. Morelli*, 107 S. C. 262, 92 S. E. 475 (1917); *Lewis v. Cooley*, 81 S. C. 461, 62 S. E. 868 (1908).

Applied in *Barnes v. Charleston, & W. C. Ry. Co.*, 106 S. C. 227, 90 S. E. 1017 (1916); *Mayfield v. Bessinger*, 87 S. C. 369, 69 S. E. 673 (1910); *Holliday v. Poston*, 60 S. C. 103, 38 S. E. 449 (1901); *Harby v. Wells*, 52 S. C. 156, 29 S. E. 563 (1898); *City Council v. Weller*, 34 S. C. 357, 13 S. E. 628 (1891); *City Council v. Ashley Phosphate Co.*, 33 S. C. 25, 11 S. E. 386 (1890); *State v. Jenkins*, 26 S. C. 121, 1 S. E. 437 (1887).

Quoted in *Metropolitan Life Ins. Co. v. Stuckey*, 194 S. C. 469, 10 S. E. (2d) 3 (1940).

Stated in *Anderson v. Seligman*, 85 S. C. 16, 67 S. E. 13 (1910); *Jenkins v. Atlantic, etc., R. Co.*, 84 S. C. 343, 66 S. E. 409 (1909); *Central v. Madden*, 81 S. C. 7, 61 S. E. 1028 (1908); *In re Hooper*, 48 S. C. 149, 26 S. E. 466 (1896); *State v. Williams*, 40 S. C. 373, 19 S. E. 5 (1893).

Cited in *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916); *State v. Pickett*, 47 S. C. 101, 25 S. E. 46 (1896).

II. APPLICATION OF SECTION.

In contract matters jurisdiction is determined by amount claimed.—*Brunson v. Furtick*, 72 S. C. 579, 52 S. E. 424 (1905).

And judgment on claim in excess of such amount is void.—*Stroy v. Nicpee*, 105 S. C. 265, 89 S. E. 666 (1916).

Plaintiff can forego part of claim.—*Stroy v. Nicpee*, 105 S. C. 265, 89 S. E. 666 (1916).

But he cannot later sue on amount omitted.—Where plaintiff, in reducing his claim so as to bring it within the jurisdiction of a trial justice, leaves out an item which could be included in his cause of action, he cannot thereafter sue on such item. *Catawba Mills v. Hood*, 42 S. C. 203, 20 S. E. 91 (1894).

If a party foregoes part of his claim to give the magistrate jurisdiction of the suit, he cannot, after judgment, sue for the amount so omitted. *Stroy v. Nicpee*, 105 S. C. 265, 89 S. E. 666 (1916).

Magistrates have jurisdiction to forfeit goods exposed for sale on Sunday.—Laws authorizing confiscation of goods offered or exposed for sale on Sunday are not invalid as extending power and authority of magistrates. *Xepapas v. Richardson*, 149 S. C. 52, 146 S. E. 686 (1929).

As term "punishment" does not include forfeiture.—*State v. Hondros*, 100 S. C. 242, 84 S. E. 781 (1915).

Magistrate can commit to jail one in default of peace bond.—A magistrate has jurisdiction, on finding defendant guilty of breach of the peace, to commit him to jail in default of a peace bond conditioned for a year and a day. *State v. Garlington*, 56 S. C. 413, 34 S. E. 689 (1900).

And may hear estoppel defense in claim and delivery.—Although this section provides that the jurisdiction of magistrates shall not extend to cases in chancery, in an action in claim and delivery to recover possession of a horse, tried before a magistrate, defense of estoppel was in pais and not equitable in its nature, and hence the magistrate had jurisdiction thereof. *Aiken v. Seabury*, 107 S. C. 376, 92 S. E. 1048 (1917).

But he may not try housebreaking and grand larceny.—A trial in a magistrate's court for housebreaking and grand larceny, both of which are felonies, is a nullity under this section, and hence is not a bar to a subsequent trial and conviction on the same charges in the court of general sessions. *State v. Rountree*, 127 S. C. 261, 121 S. E. 205 (1924).

Preliminary examination of accused does not violate section.—See note to S. C. Const., Art. 5, § 18.

Jurisdiction is not lost because title to realty is involved.—A magistrate does not lose jurisdiction of a criminal case merely because title to land is incidentally involved. *State v. Holcomb*, 63 S. C. 22, 40 S. E. 1017 (1902).

Or because of mere attempt to deny landlord's title.—Notwithstanding this section, mere attempt to deny landlord's title or assertion of a superior title will not oust the magistrate of jurisdiction in a summary pro-

ceeding. *Stewart-Jones Co. v. Shehan*, 127 S. C. 451, 121 S. E. 374 (1924).

Jurisdiction in actions for possession of realty.—In actions between landlord and tenant for the mere possession of realty, the jurisdiction of the magistrate is not affected by the value of the property but only by the value of the possession. *American Oil Co. v. Cox*, 182 S. C. 419, 189 S. E. 660 (1937).

Bond on appeal from magistrate's court.—Section 41-113 of the Code, which provides for an appeal bond in the event of an appeal from a magistrate's judgment in an ejectment action by a landlord against his tenant, is not unconstitutional in the sense that it permits a magistrate to require a bond in excess of \$100, for it bears no direct or necessary relation to jurisdiction. *American Oil Co. v. Cox*, 182 S. C. 419, 189 S. E. 660 (1937).

§ 22. Trial by jury; jury in inferior courts; grand jury.

All persons charged with an offence shall have the right to demand and obtain a trial by jury. The jury in cases civil or criminal in all municipal Courts, and Courts inferior to Circuit Courts, shall consist of six. The grand jury of each County shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court. The petit jury of the Circuit Courts shall consist of twelve men, all of whom must agree to a verdict in order to render the same. Each juror must be a qualified elector under the provision of this Constitution, between the ages of twenty-one and sixty-five years, and of good moral character.

See Const. 1868, Art. I, § 11.

- I. General Consideration.
- II. Grand Jury.
- III. Disqualification of Jurors.

Cross References.

As to presentment of grand jury required as a condition precedent to trial of crime, see note to S. C. Const., Art. 1, § 17. As to right to speedy and public trial by an impartial jury, see S. C. Const., Art. 1, § 18.

I. GENERAL CONSIDERATION.

Section incorporates law existing at time of its adoption.—The first clause of this section did not change the law then in force, but only made it permanent by incorporating it in the organic law of the land. *Burckhalter v. Jones*, 58 S. C. 89, 36 S. E. 495 (1900).

And does not inhibit legislation where trial by jury did not then exist.—The provision does not inhibit legislation as to cases where the right of trial by jury did not exist at its adoption, nor as to analogous cases. On the contrary, proceedings without jury, existing before the adoption of the S. C. Constitution, serve to authorize analogous proceedings by the legislature subsequently. *Frazee v. Beattie*, 26 S. C. 348, 2 S. E. 125 (1887).

Thus a statute giving county commissioners the power to condemn land for public roads and assess damages therefor does not violate this section, since no right to

trial by jury existed in such proceedings prior to its adoption. *Gilmer v. Hunnicutt*, 57 S. C. 166, 35 S. E. 521 (1900).

A statute providing a summary mode of ejecting tenants, who either hold over after the expiration of their leases or fail to pay rent when due, and conferring jurisdiction on justices of the peace in such cases is not unconstitutional as violating the right to a trial by jury guaranteed by this section for the reason that previous to the adoption of the Constitution no right to a jury trial existed in such proceeding. *Frazee v. Beattie*, 26 S. C. 348, 2 S. E. 125 (1887).

Capital felony must be tried by jury of twelve men.—One charged with capital felony cannot be tried by a jury of less than 12 men, though his attorney consented to trial by 11 men and though the accused remains silent and testifies before the eleven men. *State v. Hall*, 137 S. C. 261 101 S. E. 662 (1919).

Jury trial may be waived. *Belcher v. Com'rs*, 2 McC. (13 S. C. L.) 23.

Right to serve as juror is not a vested right. *Garrett v. Weinberg*, 54 S. C. 127, 31 S. E. 341, 34 S. E. 70 (1899).

Act providing for jury of six is constitutional.—An act establishing the Greenwood County court, and providing for a jury of six is constitutional under this section as applied to a conviction for violating the State prohibition law. *State v. Klugh*, 127 S. C. 429, 121 S. E. 262 (1924).

Refused charge on assault and battery not violating section. — In prosecution for assault and battery with intent to kill, refusal to instruct on law of simple assault and battery did not violate defendant's constitutional rights. *State v. Bush*, 156 S. C. 526, 143 S. E. 490 (1930).

For additional related cases, see *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916); *In re Hooper*, 48 S. C. 149, 26 S. E. 466 (1897).

Applied in *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916); *State v. Williams*, 40 S. C. 373, 19 S. E. 5 (1893); *Utsey v. Charleston, S. & N. R. Co.*, 38 S. C. 399, 17 S. E. 141 (1893).

Quoted in *Glymph v. Smith*, 170 S. C. 486, 170 S. E. 913 (1933).

Stated in *Best v. Barnwell County*, 114 S. C. 123, 103 S. E. 479 (1920); *State v. Barden*, 64 S. C. 206, 41 S. E. 959 (1902).

Cited in *McCullough v. Brown*, 41 S. C. 220, 19 S. E. 458 (1894); *State v. DeYoung*, 209 S. C. 482, 41 S. E. (2d) 100 (1947).

II. GRAND JURY.

Section is mandatory as to grand juries.

—This section, declaring that the grand jury of each county shall consist of eighteen members, is mandatory. *State v. Powers*, 59 S. C. 200, 37 S. E. 690 (1901).

And as to qualified electors.—The provision of this section that only a qualified elector may be a member of the grand jury is mandatory. *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930); *State v. Bibbs*, 192 S. C. 231, 6 S. E. (2d) 276 (1939).

"Qualified elector" means "registered elector." — The term "qualified elector," within constitutional provision regarding jurors, means "registered elector." *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930); *State v. Grant*, 199 S. C. 412, 19 S. E. (2d) 638 (1941).

Any good citizen qualified under the Constitution may be drawn to serve on the grand jury. *State v. Graham*, 79 S. C. 116, 60 S. E. 431 (1908).

There is no distinction between qualifications of a grand and of a petit juror. *State v. Williams*, 35 S. C. 344, 14 S. E. 819 (1892).

Both grand and petit jurors must be registered electors.—A juror, grand as well as petit, must be registered elector of county in which he is called to serve. *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930); *State v. Bibbs*, 192 S. C. 231, 6 S. E. (2d) 276 (1939); *State v. Grant*, 199 S. C. 412, 19 S. E. (2d) 638 (1941); *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

Court properly quashed indictment where at least two of seventeen grand jurors, who

participated in finding it, were not registered electors and were disqualified to act. *State v. Rector*, 158 S. C. 212, 155 S. E. 385 (1930).

In *State v. Bibbs*, 192 S. C. 231, 6 S. E. (2d) 276 (1939), a murder indictment was set aside upon the ground that the grand jury which found the indictment was not a legally qualified one, since five members of the jury were not legally registered electors due to the fact that their certificates of registration were not signed in accordance with the Code.

Where a grand jury was duly drawn, duly organized, and acted upon the indictment in the regular and usual manner; where it was a grand jury of the court of general sessions for the term at which the indictment was found; where it was selected by the officers having lawful authority so to do and was composed of members duly sworn; and where all the proceedings were regular in every respect, except only that it afterwards appeared that there was a statutory irregularity in the issuance of certificates of registration to these grand jurors, although each of them was qualified to receive a correct and proper certificate and the defendant expressly waived such irregularity, it was held that he could not later attack the validity of the indictment under this section because a member of the grand jury was not qualified. *State v. Hann*, 196 S. C. 211, 12 S. E. (2d) 720 (1940).

Although they need not have voted or paid poll tax.—This section requires both grand and petit jurors to be registered electors. But they are not required to have voted or to have paid poll tax. *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

Twelve grand jurors may find indictment.—Twelve grand jurors are a sufficient number to be present when an indictment is found. *State v. Williams*, 35 S. C. 344, 14 S. E. 819 (1892).

III. DISQUALIFICATION OF JURORS.

Disqualification must be proved.—Motion to quash indictment on ground of juror's disqualification will be denied in absence of proof thereof. *State v. Bazen*, 89 S. C. 260, 71 S. E. 779 (1911).

And must be unknown before verdict. — Accused, seeking a new trial on the ground of the disqualification of a juror, must show the disqualification, that it was unknown before the verdict, and that he was not negligent in failing to discover the disqualification before verdict. *State v. Jones*, 90 S. C. 290, 73 S. E. 177 (1912).

Disqualification for failure to register must be established before trial.—A party in a civil action is not entitled to a new trial because a juror was not registered, though such fact was unknown to the party during the trial, since it could have been known by a search of the registration books which are public records. *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899).

So also disqualification because of age.—Where the trial court, on motion for new trial on the ground of the disqualification of a juror because over 65 years old, found that the jurors had been drawn for 14 days, that their names had been published in the county papers a week or ten days before the court convened, that the juror was well known in the community, and that the slightest inquiry would have made known the fact that he was over age, a finding of failure to exercise diligence in discovering the disqualification before trial was justified. *State v. Jones*, 90 S. C. 290, 73 S. E. 177 (1912).

Or because of service on former trial.—Where a defendant fails to use the means afforded by law to ascertain the qualifications of jurors, it is not error to refuse a new trial based on the alleged ground that a juror had served on a former trial of the case, which fact was unknown to defendant or his counsel until after the trial. *State v. Robertson*, 54 S. C. 147, 31 S. E. 868 (1899).

Disqualification of single grand juror does not invalidate indictment, unless the grand jury was composed of only 12 men. *State v. Bazen*, 89 S. C. 260, 71 S. E. 779 (1911).

Determination that juror is competent cannot be reviewed.—Where a juror is examined on a voir dire, and after such examination the circuit judge determines that he is a competent juror, such determination, being on a question of fact, cannot be reviewed. *State v. Robertson*, 54 S. C. 147, 31 S. E. 868 (1899).

Moral character of juror is presumed good unless disproved.—Under Federal statutes requiring jurors in United States courts to have the same qualifications as jurors in the highest court of the State, this section requiring each juror to be a qualified elector of good moral character, and S. C. Const., Art. 2, § 6, disqualifying persons convicted of certain named offenses, one who had been convicted on plea of guilty of a violation of the act to regulate commerce by making false reports of the weight of certain articles shipped was not thereby disqualified to serve as a grand juror. The

commission of that offense does not show that the juror was not a man of good moral character, since such character is presumed unless the want of it is shown by conviction of a disqualifying crime or is made to appear by evidence outside the record. *Christopoulos v. United States*, 230 F. 788 (1916).

Rights of defendant where objection is timely taken.—While the disqualification of a grand juror may be waived by a defendant if he does not make the objection in time, yet when a defendant does insist at the proper time, he is entitled, as a matter of constitutional right, to have the grand jury which indicts him composed only of such persons as the Constitution has plainly declared may act. *State v. Hann*, 196 S. C. 211, 12 S. E. (2d) 720 (1940).

Venire is not quashed where one member is overage.—A jury venire should not be quashed because of the disqualification for being overage of one of the persons included therein to serve in the courts as a juror. *State v. Rasor*, 168 S. C. 221, 167 S. E. 396 (1933).

Defendant must consent to substituted juror.—A juror regularly drawn cannot have another substituted in his place without the consent of the defendant, and where such was the case, a new jury was properly drawn. *State v. Coleman*, 54 S. C. 282, 32 S. E. 406 (1899).

Allegation of racial discrimination must be proved.—It is necessary to aver and prove an allegation that negroes are discriminated against in the selection of grand jury and petit jury which tried negro defendant. *State v. Middleton*, 207 S. C. 478, 36 S. E. (2d) 742 (1946).

Members of defendant's race need not be on jury absent discrimination.—Refusal to quash an indictment or to sustain a challenge to the array of grand and petit jurors because no member of the race to which defendant belonged was on the grand jury which found the bill of indictment is not error, no discrimination against defendant's race being shown. *State v. Brownfield*, 60 S. C. 509, 39 S. E. 2 (1901), affirmed in 189 U. S. 426, 23 S. Ct. 513, 47 L. Ed. 882 (1903).

Women are not permitted to serve as jurors.—Under this section, providing, that the petit jury of the criminal courts shall consist of 12 men, women are not permitted to serve as jurors, notwithstanding the further provision that each juror shall be a qualified elector, which does not mean that every qualified elector shall be a qualified juror. *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922).

Person convicted of larceny cannot serve as juror.—A verdict rendered by a jury, one of whom is disqualified to serve on account of having been convicted of larceny, is void. *Garrett v. Weinberg*, 54 S. C. 127, 31 S. E. 341, 34 S. E. 70 (1899).

A person convicted of larceny is disqualified from sitting as a juror, and where such a person is drawn and it is a fact that none of the parties to the action had knowledge of the conviction, his disqualification entitled defendants to a new trial. *Garrett v. Weinberg*, 54 S. C. 127, 31 S. E. 341, 34 S. E. 70 (1899).

Juror duly registered in 1927 was not disqualified by failure to reregister in 1928 prior to trial of case. *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929).

Jurors registered and qualified when drawn in December are not disqualified for service because not reregistering prior to service in following year. *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929).

As no provision exists as to time of registration in particular year.—It is evident

from the provisions of the Constitution and statute law that a new registration is required every tenth year, but nowhere in the Constitution or in the statute is provision made for the time of the year at which this registration shall take place. All of these provisions must be construed together to give proper force to each, and only under a strained construction could it be held that it was necessary for every elector in the State to reregister on the first day of January of the tenth year in order to perform jury duty, provided he was otherwise qualified. *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929).

And failure to pay current taxes does not disqualify juror.—Under this section requiring each juror to be a qualified elector, it was not necessary that the juror should have paid taxes during the current year, which is an essential to his right to vote at any particular election but is not essential to his being a qualified elector registered as such. *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922).

§ 23. Actions in magistrates' courts.

Every civil action cognizable by Magistrates shall be brought before a Magistrate in the County where the defendant resides, and every criminal action in the County where the offence was committed. In all cases tried by them, the right of appeal shall be secured under such rules and regulations as may be provided by law: *Provided*, That in Counties where Magistrates have separate and exclusive territorial jurisdiction, criminal causes shall be tried in the Magistrate's district where the offence was committed, subject to such provision for change of venue from one Magistrate's district to another in the same County as may be provided by the General Assembly.

See Const. 1868, Art. IV, § 24.

Cross references.—As to civil jurisdiction of magistrates, see § 43-51 of the Code. As to proceedings in claim and delivery before magistrates, see §§ 43-171 to 43-173, 43-175, 43-178 and 43-179. As to appeals from magistrate's court in criminal cases, see §§ 7-101 to 7-107.

This constitutional provision does not define the word "resides", and the legislature has power to declare the residence of corporations for the purposes of suit. *Gibbes v. National Hospital Service*, 202 S. C. 304, 24 S. E. (2d) 513 (1943).

Jurisdiction is coextensive with county in which defendant resides.—Under this section providing that every civil action cognizable by a magistrate shall be brought before a magistrate in the county where de-

fendant resides, magistrates in a county have jurisdiction coextensive with the county, which jurisdiction is not limited to actions in the township where the defendant resides. *Wise v. Werts*, 72 S. C. 132, 51 S. E. 547 (1905).

Action is not brought in county where it arose.—Under this section providing that every civil action cognizable by a magistrate shall be brought before a magistrate in the county where the defendant resides, a requirement that an action should be brought before a magistrate in the county where the cause of action arose is unauthorized. *Baker v. Irvine*, 62 S. C. 293, 40 S. E. 672 (1902).

Bond on appeal in ejectment does not violate section.—The requirement that an

appeal by a tenant in an ejectment case for breach of lease, brought under § 41-113, must be dismissed unless bond is filed within five days does not violate this section. *Horn v. Blackwell*, 212 S. C. 480, 48 S. E. (2d) 322 (1948).

Sufficiency of pleadings as to residence.—Though this section provides that every civil action before a magistrate shall be brought in the county where the defendant resides, and though the jurisdiction of the court must be established affirmatively by the record, yet where, in actions before a magistrate, a defendant in two suits is located in one suit in the town of W., which is in G. county, and the other in D. township, in G. county, it sufficiently appears in the record that the location of the defendant is in G. county to confer jurisdiction in a magistrate's court in such county under § 43-89, providing that pleadings are not required to be in any particular form before a magistrate, but must be such as to enable a person of a common understanding to know what is intended. *Hall & Pearsall v. Sullivan*, 70 S. C. 397, 50 S. E. 27 (1905).

Action by attachment against nonresident and judgment in rem.—This section does not prevent an action by attachment against a nonresident and a judgment in rem. *Burckhalter v. Jones*, 58 S. C. 89, 36 S. E. 495 (1900).

Waiver of want of jurisdiction.—Where a defendant in claim and delivery in a magistrate's court did not reside within the territorial jurisdiction of the court, as defined by this section and statutes enacted pursuant thereto, and did not appear, though duly notified, he waived the want of jurisdiction over him and a default judgment was valid. *Ex parte Townes*, 97 S. C. 56, 81 S. E. 278 (1914).

§ 24. Compensation for all other officers.

All officers other than those named in Section nine provided for in this Article shall receive for their services such compensation as the General Assembly may from time to time by law direct.

See Const. 1868, Art. IV, § 25.

Legislature may not make "special provision" as to salaries.—This section grants no power to the legislature to make "special provision" as to salaries of officers. It merely provides that their compensation shall be fixed by the General Assembly, and this

Waiver of objection to jurisdiction by appearance.—Jurisdiction for penalty under act (24 Stat. 81) may be acquired by magistrate in another county than the one in which cause of action arose by appearance of carrier, pleading, and participating in the cause. *Jenkins v. Atlantic Coast Line R. Co.*, 84 S. C. 343, 66 S. E. 409 (1909).

Statutes inconsistent with section.—This section providing that every civil action cognizable by magistrates shall be brought before a magistrate in the county where defendant resides, being inconsistent therewith, repeals an act of 1887 (19 St. at Large, p. 1027), which provides for the location of a magistrate at Greers, in Greenville County, who shall have jurisdiction in the counties of Greenville and Spartanburg, so far as jurisdiction of an action against a resident of Spartanburg county is concerned. *Dill v. Durham*, 56 S. C. 423, 35 S. E. 3 (1900).

In view of the positive provisions of this section of the Constitution, § 10-307 of the Code, which gives the plaintiff the right to bring his claim in the county where the loss occurred, is not applicable to a magistrate's court. *Gibbes v. National Hospital Service*, 202 S. C. 304, 24 S. E. (2d) 513 (1943).

Applied in *State v. Funderburk*, 130 S. C. 352, 126 S. E. 140 (1925); *Strickland v. Seaboard, etc., Ry. Co.*, 112 S. C. 67, 98 S. E. 853 (1919); *Ragin v. Northwestern R. Co.*, 108 S. C. 171, 93 S. E. 860 (1917); *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916); *City Council v. Fowler*, 48 S. C. 8, 25 S. E. 900 (1896).

Stated in *O'Rourke v. Atlantic Paint Co.*, 91 S. C. 399, 74 S. E. 930 (1912); *State v. Easterlin*, 61 S. C. 71, 39 S. E. 250 (1901); *In re Hooper*, 48 S. C. 149, 26 S. E. 466 (1897).

§ 25. Powers at chambers.

Each of the Justices of the Supreme Court and Judges of the Circuit Court shall have the same power at chambers to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and interlocutory writs or orders

of injunction as when in open Court. The Judges of the Circuit Courts shall have such powers at chambers as the General Assembly may provide.

This section does not restrict the Supreme Court's power to issue writs of injunction to cases pending in such court, either in its original or appellate jurisdiction. *Salinas v. Aultman & Co.*, 49 S. C. 378, 27 S. E. 385 (1897).

Circuit judge has power to grant interlocutory order of injunction.—No one doubts, or has doubted, that a judge of a circuit has the power to grant an interlocutory order of injunction at chambers in any action brought in his circuit. *Salinas v. Aultman & Co.*, 49 S. C. 378, 27 S. E. 385 (1897).

And likewise justice of Supreme Court.—A justice of the Supreme Court has jurisdiction to grant an interlocutory order of injunction at chambers. This section declares that "each" of the justices of the Supreme Court shall have the same power at chambers to issue interlocutory writs or orders of injunction as when in open court—that is, as all the justices when in open court. *Salinas v. Aultman & Co.*, 49 S. C. 378, 27 S. E. 385 (1897).

Justice may issue writ in Supreme Court's original jurisdiction.—Single justice of Supreme Court has power to issue writ or order in Court's original jurisdiction and make it returnable to Court as whole. *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

Judge of another circuit sitting at chambers has jurisdiction to appoint receiver, where party opposing appointment appears and contests application on merits without objecting to court's jurisdiction. *Truesdell v. Johnson*, 144 S. C. 188, 142 S. E. 343 (1928).

Where there is no resident judge, judge of another circuit has authority to appoint receiver in chambers, in case of default or by consent of parties. *Truesdell v. Johnson*, 144 S. C. 188, 142 S. E. 343 (1928).

Judge cannot hear mandamus application

arising in his circuit while presiding elsewhere.—A circuit judge, while holding court in a circuit other than his own, has no jurisdiction to hear and determine, at chambers, in such other circuit, an application for mandamus in a cause which arose in his circuit. *La Motte v. Smith*, 50 S. C. 558, 27 S. E. 933 (1897).

Jury trial of issues of fact in quo warranto is not demandable by either party as of right, though the court or judge hearing the proceeding, if he desires, in his discretion and for his own assistance, may have the benefit of a verdict of a jury on the issues of fact. *State v. Gibbes*, 109 S. C. 135, 95 S. E. 346 (1918).

Motion for discontinuance may be heard and granted at chambers. *Shelton v. Southern Ry. Co.*, 80 S. C. 74, 61 S. E. 220 (1908).

Order for alimony pendente lite may be granted at chambers.—An order granting alimony pendente lite is an interlocutory one, which the court has power to grant at chambers, though the marriage is denied. *Messervy v. Messervy*, 80 S. C. 277, 61 S. E. 442 (1908).

Valid act requiring notification of dismissal of appeal from conviction.—Act requiring Supreme Court clerk to notify Penitentiary superintendent of dismissal of appeal suspending execution of death sentence was held not unconstitutional as depriving Supreme Court justices and circuit court judges of right to issue writs of mandamus, quo warranto, etc., at chambers. *Ex parte Howell*, 168 S. C. 197, 167 S. E. 230 (1932).

For additional related cases, see *Rawlinson v. Ansel*, 76 S. C. 395, 57 S. E. 185 (1907); *State v. Kirkland*, 41 S. C. 29, 19 S. E. 215 (1894).

Applied in *Smith v. Smith*, 51 S. C. 379, 29 S. E. 227 (1898); *In re Bowen*, 186 S. C. 125, 195 S. E. 253 (1938).

§ 26. Charge to juries.

Judges shall not charge juries in respect to matters of fact, but shall declare the law.

See Const. 1868, Art. IV, § 26.

- I. General Consideration.
- II. Object of Section.
- III. Discretion of Judge.
- IV. Powers of Judge.
- V. Duties of Judge.
- VI. Charges Not Contravening Section.
- VII. Charges Contravening Section.

I. GENERAL CONSIDERATION.

Historical note.—Some of the cases construing this section were decided under the provisions of the S. C. Constitution of 1868, although most of them were decided under the provisions of the S. C. Constitution of 1895, the section as it now stands. While

the first clause of the old section remains unchanged—"Judges shall not charge juries in respect to matters of fact"—the second clause has been changed in two important particulars. The permission to "state the testimony" has been omitted, and the permission to "declare the law" has been changed into a mandate. Instead of the former permissive clause, "Judges . . . may . . . declare the law," we find the now imperative provision, "Judges . . . shall declare the law." See *Norris v. Clinkscales*, 47 S. C. 488, 25 S. E. 797 (1896).

Section embodies common-law concept of trial.—Upon the common-law concept of the trial has been ingrafted the theory of jury trial now embodied in this section. *Powers v. Rawles*, 119 S. C. 134, 112 S. E. 78 (1922).

Magistrates are included in the word "judges" in this section, and it is their duty to charge juries in their court. *Marchbanks v. Marchbanks*, 58 S. C. 92, 36 S. E. 438 (1900).

Exception that court violated this section must specify particulars.—An exception that the court in giving instructions violated this section prohibiting judges from charging in respect to matters of fact, which exception fails to specify in what particulars such instructions trench on the constitutional provision, is too general to be considered. *Love v. Turner*, 78 S. C. 513, 59 S. E. 529 (1907).

An assignment of error that the trial judge in his charge violated the constitutional provision in relation to charging upon the facts of the case in his manner of stating the testimony is too general to be considered. *State v. Aughtry*, 49 S. C. 285, 26 S. E. 619, 27 S. E. 199 (1897).

Part of charge alleged to constitute comment on facts must be read in connection with other parts of charge. *State v. Stalvey*, 146 S. C. 275, 143 S. E. 817 (1928).

For additional related cases, see *State v. Dill*, 48 S. C. 249, 26 S. E. 567 (1897); *State v. Godfrey*, 60 S. C. 498, 39 S. E. 1 (1901); *McDaniel v. Monroe*, 63 S. C. 307, 41 S. E. 456 (1902); *Willcox, Ives & Co. v. Jeffcoat*, 135 S. C. 149, 133 S. E. 463 (1926); *Jeffords v. Tokio Marine & Fire Ins. Co.*, 123 S. C. 467, 117 S. E. 79 (1923); *State v. Danelly*, 116 S. C. 113, 107 S. E. 149 (1921); *Burnett & Johnson v. Senn*, 91 S. C. 175, 74 S. E. 376 (1912); *State v. Anderson*, 85 S. C. 229, 67 S. E. 237 (1910); *Garrett v. Weinberg*, 59 S. C. 162, 37 S. E. 51, 225 (1900).

Applied in *Walker v. Life Ins. Co.*, 175 S. C. 153, 178 S. E. 618 (1935); *State v.*

Woods, 199 S. C. 252, 19 S. E. (2d) 103 (1942); *State v. Bagwell*, 201 S. C. 387, 23 S. E. (2d) 244 (1942); *State v. Cash*, 209 S. C. 391, 40 S. E. (2d) 498 (1946); *Levesque v. Clearwater Mfg. Co.*, 209 S. C. 494, 41 S. E. (2d) 92 (1947).

Stated in *State v. Smith*, 200 S. C. 188, 20 S. E. (2d) 726 (1942).

Cited in *State v. Harrell*, 142 S. C. 24, 140 S. E. 258 (1927); *State v. Center*, 133 S. C. 185, 130 S. E. 646 (1925); *Richardson v. Northwestern R. Co.*, 131 S. C. 57, 126 S. E. 397 (1924); *State v. Jackson*, 126 S. C. 244, 119 S. E. 576 (1923); *State v. Mason*, 118 S. C. 171, 110 S. E. 128 (1921); *Clark v. Southeastern Life Ins. Co.*, 101 S. C. 249, 85 S. E. 407 (1915); *Settlemyer v. Southern Ry. Co.*, 97 S. C. 85, 81 S. E. 465 (1914); *Strauss v. Atlantic Coast Line R. Co.*, 94 S. C. 324, 77 S. E. 1117 (1913); *Craig v. Augusta-Aiken Ry. Co.*, 89 S. C. 161, 71 S. E. 983 (1911); *Martin v. Columbia St. Ry., etc.*, *Power Co.*, 84 S. C. 568, 66 S. E. 993 (1910); *Dyson v. Southern Ry. Co.*, 83 S. C. 354, 65 S. E. 344 (1909); *Forrest v. McBee*, 78 S. C. 105, 58 S. E. 955 (1907); *Frasier v. Charleston & W. C. Ry. Co.*, 73 S. C. 140, 52 S. E. 964 (1905); *Weber v. Southern Ry. Co.*, 65 S. C. 356, 43 S. E. 888 (1903); *State v. Marchbanks*, 61 S. C. 17, 39 S. E. 187 (1901); *State v. Meares*, 60 S. C. 527, 39 S. E. 245 (1901); *Sparkman v. Supreme Council*, 57 S. C. 16, 35 S. E. 391 (1900); *Tucker v. Charleston & W. Ry. Co.*, 51 S. C. 306, 28 S. E. 943 (1898); *Ober & Sons Co. v. Blalock*, 40 S. C. 31, 18 S. E. 264 (1893); *Sanders v. Bagwell*, 37 S. C. 145, 15 S. E. 714, 16 S. E. 770 (1892); *Amaker v. New*, 33 S. C. 28, 11 S. E. 386 (1890); *State v. Bigham*, 119 S. C. 368, 112 S. E. 332 (1922); *Renno v. Seaboard, etc., Ry.*, 120 S. C. 7, 112 S. E. 439 (1922); *Anderson v. Merchants' Grocery Co.*, 99 S. C. 383, 84 S. E. 109 (1914); *Deal v. Deal*, 91 S. C. 351, 74 S. E. 482 (1912); *German-American Ins. Co. v. Southern Ry. Co.*, 77 S. C. 467, 58 S. E. 337 (1907); *State v. Norton*, 69 S. C. 454, 48 S. E. 464 (1904); *State v. Adams*, 68 S. C. 421, 47 S. E. 676 (1904); *State v. Bowers*, 65 S. C. 207, 43 S. E. 656 (1903); *McCoy v. State Highway Dept.*, 169 S. C. 436, 169 S. E. 174 (1933); *Garrison v. Coca Cola Bottling Co.*, 174 S. C. 396, 177 S. E. 656 (1934); *State v. Eskew*, 206 S. C. 519, 34 S. E. (2d) 767 (1945), reprinted with corrections in 211 S. C. 565, 34 S. E. (2d) 767 (1945).

II. OBJECT OF SECTION.

Judge shall state principles of law.—This section simply means that the judge shall

state the controlling principles of law applicable to the case in the light of the pleadings and the evidence, even if no request is presented by counsel for either party. If any elaboration thereof or a charge on some specific phase is desired, counsel must bring the matter to the attention of the court or it will be deemed to have been waived. It is manifest that this rule does not apply if the court has given "erroneous directions." *Coleman v. Lurey*, 199 S. C. 442, 20 S. E. (2d) 65 (1942); *Trexler v. McIntyre*, 216 S. C. 469, 58 S. E. (2d) 887 (1950).

But jury shall decide all questions of fact.—The real object of this clause of the Constitution is to leave the decision of all questions of fact to the jury exclusively, uninfluenced by any expressions of opinion by the judge. *State v. White*, 15 S. C. 381, (1881); *State v. Davis*, 27 S. C. 609, 4 S. E. 567 (1888); *State v. Pruitt*, 187 S. C. 58, 196 S. E. 371 (1938); *Haynes v. Graham*, 192 S. C. 382, 6 S. E. (2d) 903 (1940); *State v. Coggins*, 210 S. C. 242, 42 S. E. (2d) 240 (1947), *dis. op. of Taylor, A. J.*

This section was intended clearly to leave to the jury all questions of fact, and to prevent the judges from forcing upon juries their own convictions as regards matters of fact. The force and effect of any evidence is for the jury; it is for them to determine what credence they will give to it and what weight it will have with them. The juries are the judges of all matters of fact, and cannot look to the court for a controlling view; they are to form their own conclusions from the facts submitted to them, and the court cannot employ its influence over the minds of the jurors to force upon them its conclusions in any case. The court is not at liberty to give its conclusions in any particular portions of the testimony. The real object of this clause in the Constitution is to leave the decision of all questions of fact to the jury exclusively, uninfluenced by any expressions of opinion by the judge. The judge's position would naturally add great weight to any opinion he might express upon any question of fact arising in a case, and for this reason he should carefully refrain from and avoid expressing any opinion that he may have formed from the facts as to the force, weight, and effect, leaving it to the jury to draw their own conclusions, and not impress upon them any impressions that the testimony may have made in the mind of the judge. The juries are to determine all questions of fact, uninfluenced by the judge and unbiased by his impressions. *State v. Mahaffey*, 125 S. C. 313, 118 S. E. 623 (1923).

Judge may not intimate opinion of case to jury.—The purpose of this section is to prevent trial judge from intimating to jury his opinion of the case, what weight should be given to the evidence, and participating in any manner with jury's finding of fact. *Enlee v. Seaboard, etc., Ry. Co.*, 110 S. C. 137, 96 S. E. 490 (1918); *State v. Green*, 167 S. C. 359, 166 S. E. 359 (1932); *Haynes v. Graham*, 192 S. C. 382, 6 S. E. (2d) 903 (1940); *Watson v. Cox Bros. Lumber Co.*, 203 S. C. 125, 26 S. E. (2d) 401 (1943); *Jones v. Elbert*, 206 S. C. 508, 34 S. E. (2d) 796 (1945), *reprinted with corrections in 211 S. C. 553, 34 S. E. (2d) 796 (1945).*

A judge violates this provision when he expresses in his charge his own opinion upon the force and effect of the testimony or of any part of it, or intimates his views of the sufficiency or insufficiency of the evidence in whole or in part. *Norris v. Clinkscales*, 47 S. C. 488, 25 S. E. 797 (1896); *Gathings v. Great Atlantic & Pacific Tea Co.*, 168 S. C. 385, 167 S. E. 652 (1933); *State v. Pruitt*, 187 S. C. 58, 196 S. E. 371 (1938).

Either expressly or impliedly.—A trial judge cannot convey to the jury, either expressly or impliedly, his opinion of the force and effect of testimony upon any question of fact at issue. *Jackson v. Jackson*, 32 S. C. 591, 11 S. E. 204 (1890); *State v. Pruitt*, 187 S. C. 58, 196 S. E. 371 (1938); *State v. Simmons*, 209 S. C. 531, 41 S. E. (2d) 217 (1947).

In *State v. Howell*, 28 S. C. 250, 5 S. E. 617 (1888), the court construed this section to mean that while trial judges may state the testimony and so arrange it as to enable the jury to apply it to the legal points involved, yet they cannot convey to the jury, either expressly or impliedly, their opinions as to the force of said testimony upon any question of fact at issue between the parties. In other words, the jury must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammelled by any intimation from the judge as to whether a certain fact at issue has been proved or not. *Haynes v. Graham*, 192 S. C. 382, 6 S. E. (2d) 903 (1940).

Or intentionally.—Under this section the trial court should avoid expressions of opinions reasonably calculated to influence the jury in deciding material issue of fact. *Powers v. Rawles*, 119 S. C. 134, 112 S. E. 78 (1922).

Or unintentionally.—The trial court may not, even unintentionally, intimate to the jury any opinion it may have as to the facts of the case, as this section in express terms reserves this power to the jurors, un-

influenced by the weight of the judge's views. *Peay v. Durham Life Ins. Co.*, 185 S. C. 78, 193 S. E. 199 (1937).

At any stage of trial.—A judge may not become a participant in the verdict of the jury by indicating an opinion at any stage of the trial on an issuable fact. *Jones v. Elbert*, 206 S. C. 508, 34 S. E. (2d) 796 (1945), reprinted with corrections in 211 S. C. 553, 34 S. E. (2d) 796 (1945).

By interrogation of witnesses or remarks upon evidence offered.—Not only must the formal charge to the jury be kept free from any statement of facts in issue or expression as to the weight and sufficiency of evidence, but it has been frequently held that a trial judge should not by the interrogation of witnesses, by remarks in ruling upon evidence offered, or by comment upon the facts in relation to interlocutory motions, indicate opinions or express views reasonably calculated to influence the jury in deciding a material issue of fact. *Powers v. Rawles*, 119 S. C. 134, 112 S. E. 78 (1922); *Lusk v. State Highway Dept.*, 181 S. C. 101, 186 S. E. 786 (1936); *Crenshaw v. Southern Ry. Co.*, 214 S. C. 553, 53 S. E. (2d) 789 (1949).

Or by ridiculing witness.—Any comment of the trial judge, in the presence of the jury, upon the testimony of a witness during the trial of a case which tends to weaken the weight of the testimony of such witness, especially where the witness is ridiculed, comes within the prohibition of this section of the Constitution. *Crenshaw v. Southern Ry. Co.*, 214 S. C. 553, 53 S. E. (2d) 789 (1949).

It was error for the trial judge to say in the presence of the jury concerning the appellant's principal witness, "I don't think he's got sense enough to understand the English language," under the provision of this section. *Crenshaw v. Southern Ry. Co.*, 214 S. C. 553, 53 S. E. (2d) 789 (1949).

Or by declaring law so as to ignore one party to other's advantage.—If the judge may not become a participant in the verdict of the jury by indicating an opinion at any stage of the trial on an issuable fact, clearly he may not participate in the verdict by so declaring the law as to ignore or minimize legitimate contentions of fact of one party to the advantage of the other. To do so may be to express an opinion indirectly upon the weight and sufficiency of evidence far more influential in molding the jury's verdict than isolated expressions of opinion upon detached portions of the evidence. *Powers v. Rawles*, 119 S. C. 134, 112 S. E. 78 (1922).

Or by stating testimony in instructions.—

Ballentine v. Hammond, 68 S. C. 153, 46 S. E. 1000 (1904).

Or by charging rule of evidence.—A charge stating a rule of evidence is erroneous as a charge on the facts. *State v. Phillips*, 73 S. C. 236, 53 S. E. 370 (1906).

Or by charge intimating inference to be drawn from facts.—Request which intimates to jury inference to be drawn from facts in case therein stated in detail is charge on facts. *Weaver v. Southern Ry. Co.*, 76 S. C. 49, 56 S. E. 657 (1907).

Or by stating undisputed facts in absence of uncontradicted evidence.—*State v. Cannon*, 49 S. C. 550, 27 S. E. 526 (1897).

But hypothetical illustration may be proper.—Giving illustrations with respect to deducing a conclusion from facts and circumstances, but making no reference to any disputed fact except in a hypothetical way, was not in violation of this section forbidding a charge on the facts. *State v. Higgins*, 215 S. C. 153, 54 S. E. (2d) 553 (1949).

As may charge merely stating rule of evidence.—A charge merely stating a rule of evidence does not come within the inhibition of the Constitution. *State v. Phillips*, 73 S. C. 236, 53 S. E. 370 (1906).

Modification of requested instruction is proper.—It is proper to modify a requested instruction which, unmodified, would constitute a violation of this section. *State v. Cooper*, 120 S. C. 280, 113 S. E. 132 (1922).

Request to charge on weight of evidence of violation of this section is properly refused. *Glenn v. Walker*, 113 S. C. 1, 100 S. E. 706 (1919).

III. DISCRETION OF JUDGE.

This section does not affect discretion of trial judge in conduct of trial, nor prevent him from asking questions of witnesses. *Wilson v. Ohio River, etc., Ry. Co.*, 52 S. C. 537, 30 S. E. 406 (1898).

And the court may in declaring the law base it on hypothetical findings of fact. *State v. Jones*, 86 S. C. 17, 67 S. E. 160 (1910); *Sentell v. Southern Ry. Co.*, 70 S. C. 183, 49 S. E. 215 (1904); *Ballentine v. Hammond*, 68 S. C. 153, 46 S. E. 1000 (1904); *Jenkins v. Charleston St. Ry. Co.*, 58 S. C. 373, 36 S. E. 703 (1900); *State v. Aughtry*, 49 S. C. 285, 26 S. E. 619, 27 S. E. 199 (1897); *Norris v. Clinkscales*, 47 S. C. 488, 25 S. E. 797 (1896); *Greene v. Duncan*, 37 S. C. 239, 15 S. E. 956 (1892); *Kitchens v. Southern Ry. Co.*, 80 S. C. 531, 61 S. E. 1016 (1908); *Bellamy v. Conway, etc., R. Co.*, 85 S. C. 450, 67 S. E. 545 (1910).

IV. POWERS OF JUDGE.

Judge may state issues presented.—Under this section a statement of the issues presented, and all the evidence on which the State and the defendant relied to support their respective positions, is authorized. *State v. Johnson*, 66 S. C. 23, 44 S. E. 58 (1903).

And may assume uncontested fact.—Where there is nothing in the testimony contesting a fact, the assumption of such fact in an instruction is not erroneous as a charge on the evidence. *Riser v. Southern Ry. Co.*, 67 S. C. 419, 46 S. E. 47 (1903).

Facts stated in a charge which were not in dispute do not make the charge erroneous as one on facts in violation of this section. *Turner v. Lyles*, 68 S. C. 392, 48 S. E. 301 (1904).

Or refer to testimony already in case.—It is not a violation of this section for the judge, in giving his reason for a ruling on evidence, to refer to testimony already in the case. *State v. Thrailkill*, 71 S. C. 136, 50 S. E. 551 (1905).

In refusing to charge that there is no evidence to show that acts in question were intentional or wilful, it is not a charge on facts for the judge to say that there is some evidence of such acts, if there be such evidence, disclaiming any intention to give opinion as to weight or sufficiency of evidence. *Thomasson v. Southern Ry. Co.*, 72 S. C. 1, 51 S. E. 443 (1905).

Or refer to admitted state of facts.—*Williams v. Atlantic Coast Lumber Corp.*, 136 S. C. 423, 134 S. E. 390 (1926).

Or repeat portion of evidence.—The court does not violate this section by repeating a short portion of the evidence given without expressing any opinion as to its truth or falsity. *State v. Moorman*, 27 S. C. 22, 2 S. E. 621 (1887).

Or explain ordinance.—Judge's explanation of municipal ordinance regulating speed of automobiles is not charge on facts. *Daugherty v. Williams*, 144 S. C. 437, 142 S. E. 722 (1928).

Or control argument of counsel.—Under the power of the court to control the argument of counsel and to keep the same within the proper limits, the trial judge has the right to see that counsel in his enthusiasm does not go out of the record. So, where the defendant denied that he intended to participate in a holdup and there was no evidence on this point, it was correct for the trial judge to remind the attorney representing the defendant that there was no evidence in the record. This would not make him a participant with the jury in

determining the facts. *State v. Bolin*, 177 S. C. 57, 180 S. E. 809 (1935).

Or state testimony susceptible of only one inference.—Where testimony is susceptible of only one inference, the court may direct the jury to so find. *Harrison v. Phoenix Assur. Co.*, 127 S. C. 205, 120 S. E. 848 (1924).

But trial judge has no power to weigh the evidence. *Cato v. Atlanta & Charlotte, etc., Ry. Co.*, 164 S. C. 123, 162 S. E. 239 (1931).

Colloquy is not necessarily prejudicial.—Colloquy among foreman of jury, counsel, and judge as to certain evidence is not necessarily prejudicial. *State v. Gibson*, 83 S. C. 34, 64 S. E. 607, 916 (1909).

That trial judge, in colloquy with attorney, related contents of newspaper editorial on jurors' duty to assist courts in enforcement of laws was held not error as charge on facts. *State v. Green*, 167 S. C. 359, 166 S. E. 359 (1932).

And incidental remark does not violate section.—A remark by the judge in making a ruling during the trial does not violate this section. *State v. Crawford*, 39 S. C. 343, 17 S. E. 799 (1893).

It would be a great stretch of construction to hold that an incidental remark, made during the progress of the case, amounted to a violation of this section. *State v. Turner*, 36 S. C. 534, 15 S. E. 602 (1892).

Even where it would constitute error if included in instruction.—When addressing counsel and otherwise making necessary rulings, a trial judge may make use of expressions that would constitute prejudicial error if included in his instructions to the jury upon the law. *State v. Deas*, 202 S. C. 9, 23 S. E. (2d) 820 (1943).

V. DUTIES OF JUDGE.

Judge must declare the law.—The requirement that the judge "shall declare the law" means that he shall explain so much of the criminal law as is applicable to the issues made by the evidence adduced on the trial. *State v. White*, 211 S. C. 276, 44 S. E. (2d) 741 (1947).

But jury must draw inference from facts.—Negligence being a mixed question of law and fact, it is the court's duty to define negligence, but it is the jury's province to draw the inference from the facts. *Turbyfill v. Atlanta & C., etc., Ry. Co.*, 83 S. C. 325, 65 S. E. 278 (1909); *Hunter v. Pelham Mills*, 52 S. C. 279, 29 S. E. 727 (1898); *Lamplsey v. Atlantic Coast Line R. Co.*, 71 S. C. 156, 50 S. E. 773 (1905).

In an action for damages for malicious prosecution, whether circumstances relied

on to rebut implication of malice from want of probable cause are conclusive is, ordinarily, an issue of fact for the jury. *Jennings v. Clearwater Mfg. Co.*, 171 S. C. 498, 172 S. E. 870 (1934).

Duty of judge to declare law is mandatory.—Conjoined with the duty to refrain from trespassing upon the domain of the facts is the mandatory and nondelegable duty imposed upon the judge of declaring the law. *Powers v. Rawles*, 119 S. C. 134, 112 S. E. 78 (1922).

But right to have law declared may be waived.—This section is mandatory, but it has repeatedly been held, both in civil cases and in criminal cases not involving capital punishment, that the right to have the law declared may be waived like any other right. *State v. Duck*, 210 S. C. 94, 41 S. E. (2d) 628 (1947).

Of course, the right to have all the law declared may be waived like any other right. *Watson v. Sprott*, 134 S. C. 367, 133 S. E. 27 (1926).

By failure to request instructions.—The right to have all the law declared may be waived like any other right and an omission acquiesced in. The failure to request instructions on any particular point is regarded as a waiver of the right to such instruction and acquiescence in the omission. *White v. Charleston, etc., Ry. Co.*, 132 S. C. 448, 129 S. E. 457 (1925); *State v. Lyles*, 210 S. C. 87, 41 S. E. (2d) 625 (1947).

Unless omission is fundamental.—If instructions given are correct as far as they go, it cannot be assigned as error that the court omitted to instruct on all points involved in the case if the attention of the court has not been directed thereto by special request for instructions on those points, unless the omission relates to a matter which is basic or fundamental. *State v. Lyles*, 210 S. C. 87, 41 S. E. (2d) 625 (1947).

Or by failure to request additional charges.—Failure to declare the law applicable to the case to the jury, as required by this section, is not reversible error in the absence of a request for additional charges. *Huffman v. Moore*, 122 S. C. 220, 115 S. E. 634 (1923).

Or to ask for amplification of charge.—Charge of trial court should not on appeal be held defective for failure to declare law, as required by this section, where judge was not asked to amplify his charge and no request was made for further charge. *State v. Wardlaw*, 153 S. C. 175, 150 S. E. 614 (1929).

Failure to give instructions may be cured by verdict.—In motorist's action for colli-

sion with wagons, magistrate's failure to give instructions except as to kind of verdict jury might render was held not in compliance with this constitutional provision requiring judges to charge on the law but not on the facts. However, failure so to charge was not prejudicial where the proper result was reached. *Westbrook v. Jefferies*, 173 S. C. 178, 175 S. E. 433 (1934).

The law is the right of a party arising out of a state of facts. A jury ought to be instructed about what right springs out of a fact to be determined by them. The jury ought not to be left to cut a way through the woods with no compass to guide it. But if the jury has found the right way without a compass, then no real wrong has been done. *Collins-Plass Thayer Co. v. Hewlett*, 109 S. C. 245, 95 S. E. 510 (1918).

Exception to charge must not be too general.—An exception that the court erred in not charging the law applicable to the issues is too general for consideration on appeal, because it fails to specify in what particular there was error. *State v. Hendrix*, 86 S. C. 64, 68 S. E. 129 (1910).

VI. CHARGES NOT CONTRA-VENING SECTION.

Charges were held not to contravene this section in cases treating the following subjects.—

Account and accounting, *Crosland Co. v. Pearson*, 86 S. C. 313, 68 S. E. 625 (1910); adultery, *State v. Martin*, 120 S. C. 208, 112 S. E. 922 (1922); adverse possession, *Bryan v. Donnelly*, 87 S. C. 388, 69 S. E. 840 (1910); assault and battery, *State v. Green*, 167 S. C. 359, 166 S. E. 359 (1932); automobiles, *Denny v. Doe*, 116 S. C. 307, 108 S. E. 95 (1921); burden of proof, *Clayton v. Southern Ry. Co.*, 110 S. C. 122, 96 S. E. 479 (1918); *Waters v. South Carolina Light, etc., Co.*, 103 S. C. 489, 88 S. E. 289 (1916); burglary and grand larceny, *State v. Hurt*, 212 S. C. 461, 48 S. E. (2d) 313 (1948); carriers, *Harris v. Greenville Tract. Co.*, 101 S. C. 360, 85 S. E. 899 (1915); *Dodd v. Spartanburg Ry. Gas, etc., Co.*, 95 S. C. 9, 78 S. E. 525 (1913); *Nelson v. Charleston, etc., Ry. Co.*, 92 S. C. 151, 75 S. E. 408, 121 S. E. 198 (1912); *Ladshaw v. Southern Ry. Co.*, 90 S. C. 462, 73 S. E. 879 (1912); *Horne v. Southern Ry. Co.*, 186 S. C. 525, 197 S. E. 31 (1938); compensation, *Ott v. American Chemical Co.*, 171 S. C. 359, 172 S. E. 304 (1934); conspiracy, *State v. McAdams*, 167 S. C. 405, 166 S. E. 405 (1932); crossings, *Thomasson v. Southern Ry. Co.*, 72 S. C. 1, 51 S. E. 443 (1905); *Gosa v. Southern Ry. Co.*, 67 S. C. 347, 45 S. E.

810 (1903); *Brown v. Southern Ry. Co.*, 65 S. C. 260, 43 S. E. 794 (1903); *Davis v. Atlanta & C., etc., Ry. Co.*, 63 S. C. 370, 41 S. E. 468 (1902); *Kirby v. Southern Ry. Co.*, 63 S. C. 494, 41 S. E. 765 (1902); *Edwards v. Southern Ry. Co.*, 63 S. C. 271, 41 S. E. 458 (1902); *Turbyfill v. Atlanta & C., etc., Ry. Co.*, 86 S. C. 379, 68 S. E. 687 (1910); *Turbyfill v. Atlanta & C., etc., Ry. Co.*, 83 S. C. 325, 65 S. E. 278 (1909); *damages*, *Bussey v. Charleston, etc., Ry. Co.*, 52 S. C. 438, 30 S. E. 477 (1898); *ejecting from train*, *Enlee v. Seaboard, etc., Ry.*, 110 S. C. 137, 96 S. E. 490 (1918); *ejectment*, *Bradley v. Drayton*, 48 S. C. 234, 26 S. E. 613 (1897); *electricity*, *Walker v. Southern Bell Tel. & Tel. Co.*, 92 S. C. 188, 75 S. E. 1024 (1912); *evidence*, *State v. Johnson*, 66 S. C. 23, 44 S. E. 58 (1903); *State v. Taylor*, 54 S. C. 174, 32 S. E. 149 (1899); *fertilizers*, *Durham Fertilizer Co. v. Pagett*, 39 S. C. 69, 17 S. E. 563 (1893); *fire insurance*, *Kingman v. Lancashire Ins. Co.*, 54 S. C. 599, 32 S. E. 762 (1899); *gambling*, *State v. Lane*, 82 S. C. 144, 63 S. E. 612 (1909); *homicide*, *State v. Kennedy*, 143 S. C. 318, 141 S. E. 559 (1928); *State v. Pittman*, 137 S. C. 75, 134 S. E. 514 (1926); *State v. Brown*, 108 S. C. 490, 95 S. E. 61 (1918); *State v. Gallman*, 79 S. C. 229, 60 S. E. 682 (1908); *State v. Davis*, 50 S. C. 405, 27 S. E. 905 (1897); *State v. Anghtry*, 49 S. C. 285, 26 S. E. 619, 27 S. E. 199 (1897); *State v. Dill*, 48 S. C. 249, 26 S. E. 567 (1897); *State v. Way*, 38 S. C. 333, 17 S. E. 39 (1893); *State v. Littlejohn*, 33 S. C. 599, 11 S. E. 638 (1890); *State v. Jackson*, 36 S. C. 487, 15 S. E. 559 (1892); *State v. Davis*, 27 S. C. 609, 4 S. E. 567 (1888); *State v. Milling*, 35 S. C. 16, 14 S. E. 284 (1892); *State v. Wyse*, 32 S. C. 45, 10 S. E. 612 (1890), *affirmed* in 33 S. C. 582, 12 S. E. 556 (1891); *State v. James*, 31 S. C. 218, 9 S. E. 844 (1889); *State v. Williams*, 31 S. C. 238, 9 S. E. 853 (1889); *State v. Norton*, 28 S. C. 572, 6 S. E. 820 (1888); *State v. Addy*, 28 S. C. 4, 4 S. E. 814 (1888); *housebreaking and larceny*, *State v. Lucas*, 88 S. C. 520, 71 S. E. 27 (1911); *State v. Howard*, 32 S. C. 91, 10 S. E. 831 (1890); *injury on highways*, *Latimer v. Anderson County*, 95 S. C. 187, 78 S. E. 879 (1913); *injury on railroad bridge*, *Rembert v. South Carolina Ry. Co.*, 31 S. C. 309, 9 S. E. 968 (1889); *insurance*, *Rearden v. State Mut. Life Ins. Co.*, 79 S. C. 526, 60 S. E. 1106 (1908); *Lagrone v. Timmerman*, 46 S. C. 372, 24 S. E. 290 (1896); *Tinsley v. Prudential Ins. Co.*, 183 S. C. 457, 191 S. E. 307 (1937); *intoxicating liquors*, *State v. Arnold*, 127 S. C. 80, 120 S. E. 747 (1924); *State v. Nickels*, 65 S. C. 169, 43 S. E. 521 (1903);

larceny, *State v. Roof*, 196 S. C. 204, 12 S. E. (2d) 705 (1941); *libel*, *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927); *logs and logging*, *Williams v. Atlantic Coast Lumber Corp.*, 136 S. C. 423, 134 S. E. 390 (1926); *marriage*, *Pooler v. Smith*, 73 S. C. 102, 52 S. E. 967 (1905); *master and servant*, *Pinckney v. Atlantic Coast Line Ry. Co.*, 92 S. C. 528, 75 S. E. 964 (1912); *Wilson v. Southern Ry. Co.*, 73 S. C. 481, 53 S. E. 968 (1906); *master and servant—negligence*, *McKain v. Camden Water, etc., Co.*, 89 S. C. 378, 71 S. E. 949 (1911); *membership in benevolent society*, *Thompson v. Family Protective Union*, 66 S. C. 459, 45 S. E. 19 (1903); *nuisances*, *State v. Nelson*, 79 S. C. 97, 60 S. E. 307 (1908); *obstructing culvert*, *Shores v. Southern Ry. Co.*, 72 S. C. 244, 51 S. E. 699 (1905); *partition*, *Moss v. Smith*, 73 S. C. 231, 53 S. E. 284 (1906); *ruling on motion for nonsuit*, *Hunt v. Atlantic Coast Lumber Corp.*, 101 S. C. 64, 85 S. E. 229 (1915); *sales*, *Pittsburgh Plate Glass Co. v. Monroe Bros.*, 79 S. C. 564, 61 S. E. 92 (1908); *taking land without compensation*, *Baynham v. State Highway Dept.*, 181 S. C. 435, 187 S. E. 528 (1936); *temporary insanity*, *State v. Stalvey*, 146 S. C. 275, 143 S. E. 817 (1928); *warehouses and warehousemen*, *Jordan v. Hudgens*, 146 S. C. 209, 143 S. E. 811 (1928); *witnesses*, *State v. Crosby*, 88 S. C. 98, 70 S. E. 440 (1911); *State v. Anderson*, 26 S. C. 599, 2 S. E. 699 (1887).

VIII. CHARGES CONTRAVENING SECTION.

Charges were held to violate this section in cases treating the following subjects.—

Adverse possession, *Lewis v. Pope*, 86 S. C. 285, 68 S. E. 680 (1910); *alibi*, *State v. Smalls*, 98 S. C. 297, 82 S. E. 421 (1914); *assault and battery*, *State v. Howell*, 28 S. C. 250, 5 S. E. 617 (1888); *burglary*, *State v. Brown*, 33 S. C. 151, 11 S. E. 641 (1890); *carriers—negligence*, *Lawson v. Southern Ry. Co.*, 91 S. C. 201, 74 S. E. 473 (1912); *contracts*, *Stouffer v. Erwin*, 81 S. C. 541, 62 S. E. 843 (1908); *conviction on testimony of accomplice*, *State v. Clark*, 85 S. C. 273, 67 S. E. 300 (1910); *State v. Sowell*, 85 S. C. 278, 67 S. E. 316 (1910); *evidence*, *State v. Mitchell*, 56 S. C. 524, 35 S. E. 210 (1900); *Burnett v. Crawford*, 50 S. C. 161, 27 S. E. 645 (1897); *State v. Stello*, 49 S. C. 488, 27 S. E. 659 (1897); *intoxicating liquor*, *State v. Burns*, 133 S. C. 238, 130 S. E. 641 (1925); *larceny*, *State v. Caddon*, 30 S. C. 609, 8 S. E. 536 (1889); *negligence*, *China v. Sumter*, 51 S. C. 453, 29 S. E. 206 (1898);

partnership, *Wilson v. Moss*, 79 S. C. 120, 60 S. E. 313 (1908); slander, *Gathings v. Great Atlantic & Pacific Tea Co.*, 168 S. C. 385, 167 S. E. 652 (1933); telegraphs, *Toale v.*

Western Union Tel. Co., 76 S. C. 248, 57 S. E. 117 (1907); witnesses, *Sumter Trust Co. v. Holman*, 134 S. C. 412, 132 S. E. 811 (1926).

§ 27. Clerk of court.

There shall be elected in each county, by the electors thereof, one Clerk for the Court of Common Pleas, who shall hold his office for the term of four years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be Clerk of all other Courts of record held therein, but the General Assembly may provide by law for the election of a Clerk, with a like term of office, for each or any other of the Courts of record, and may authorize the Judge of the Probate Court to perform the duties of Clerk for his Court under such regulations as the General Assembly may direct. Clerks of Courts shall be removable for such cause and in such manner as shall be prescribed by law.

See Const. 1868, Art. IV, § 27.

Legislature has no power to vary term of clerk of court fixed by State Constitution at four years. *Cannon v. Sligh*, 170 S. C. 45, 169 S. E. 712 (1933).

And statutes limiting such term are unconstitutional.—A statute, construed as limiting the term of the clerk of court, elected to fill vacancy caused by death of predecessor, to unexpired portion of predecessor's term is unconstitutional as varying the term fixed in this section. *Cannon v. Sligh*, 170 S. C. 45, 169 S. E. 712 (1933).

So much of § 14-302 of the Code as provides for an election "to fill the unexpired term" and for the tenure of office of the

person so elected is in conflict with this constitutional provision and is, therefore, inoperative and void. *Cannon v. Sligh*, 170 S. C. 45, 169 S. E. 712 (1933); *Limehouse v. Blackwell*, 190 S. C. 122, 2 S. E. (2d) 483 (1939).

But statutes providing for time of election are constitutional.—Sections 15-1701 and 23-303, providing for the time of election of the clerks of court, are not in conflict with this section, but are, on the contrary, supplementary thereto and valid. *Cannon v. Sligh*, 170 S. C. 45, 169 S. E. 712 (1933).

§ 28. Attorney General.

There shall be an Attorney General for the State, who shall perform such duties as may be prescribed by law. He shall be elected by the qualified electors of the State for the term of four years, and shall receive for his services such compensation as shall be fixed by law.

1924 (33) 1492; 1926 (34) 961.

See Const. 1868, Art. IV, § 28.

Cited in *Cooley v. South Carolina Tax Comm.*, 204 S. C. 10, 28 S. E. (2d) 445 (1943).

§ 29. Solicitor.

There shall be one Solicitor for each Circuit, who shall reside therein, to be elected by the qualified electors of the Circuit, who shall hold his office for the term of four years, and shall receive for his services such compensation as shall be fixed by law. In all cases when an attorney for the State of any Circuit fails to attend and prosecute according to law, the Court shall have power to appoint an attorney pro tempore. In the event of the establishment of County Courts the General Assembly may provide for one Solicitor for

each County in the place and instead of the Circuit Solicitor, and may prescribe his powers, duties and compensation.

See Const. 1868, Art. IV, § 29.

Filling vacancy.—The solicitor is an “officer of the executive department,” and the Governor has no power to appoint a solicitor for a time extending beyond the first general election held after the vacancy occurred. *State v. Singleton*, 100 S. C. 465, 84 S. E. 989 (1915).

For additional related case, see *State v. Hough*, 103 S. C. 87, 87 S. E. 436 (1915).

Quoted in *State v. Charles*, 183 S. C. 188, 190 S. E. 466 (1937).

§ 30. Sheriff and coroner.

The qualified electors of each County shall elect a Sheriff and Coroner, for the term of four years, and until their successors are elected and qualified; they shall reside in their respective Counties during their continuance in office, and be disqualified for the office a second time if it should appear that they, or either of them, are in default for moneys collected by virtue of their respective offices.

See Const. 1868, Art. IV, § 30.

Legislature may fix time for elections and filling vacancies.—This section makes no provision whatever for filling a vacancy, nor does it prescribe any time for the election of sheriffs. Hence, it follows that these matters are within the legislative power and discretion. *Privette v. Grinnell*, 191 S. C. 376, 4 S. E. (2d) 305 (1939).

Sheriff is constitutional officer not subject to legislative control.—The sheriff is a constitutional officer, and as such is not subject to the specific control of the legislature as contemplated in S. C. Const., Art. 7, § 11. *Gamble v. Clarendon County*, 188 S. C. 250, 198 S. E. 857 (1938).

Applied in *State v. Hough*, 103 S. C. 87, 87 S. E. 436 (1915).

§ 31. Writs; indictments.

All writs and processes shall run and all prosecutions shall be conducted in the name of the State of South Carolina; all writs shall be attested by the Clerk of the Court from which they shall be issued; and all indictments shall conclude “against the peace and dignity of the State.”

See Const. 1868, Art. IV, § 31.

Substantial compliance with section is sufficient.—A literal compliance with the mandatory formulas of this section is not exacted, but a substantial compliance is sufficient. *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903).

And indictment substantially complying herewith is not quashed.—An indictment should not be quashed when it concludes with the words “against the peace and dignity of the same State aforesaid,” instead of the words “against the peace and dignity of the State,” as required by this section, as the additional words may be regarded as surplusage. *State v. Mason*, 54 S. C. 240, 32 S. E. 357 (1899); *State v. Robinson*, 27 S. C. 615, 4 S. E. 570 (1888).

Term “prosecutions” applies to indictments for crime, and does not affect suits under penal statutes, which suits may be

brought in the name of any person in the manner provided by the statute creating the same. *Johnson v. Seaboard Air Line Ry.*, 73 S. C. 36, 52 S. E. 644 (1905).

And to information charging violation of ordinance.—This section does not prohibit a prosecution on information under oath for violation of a city ordinance. *City Council v. Leopard*, 61 S. C. 99, 39 S. E. 248 (1901).

Summons is not process within this section.—The courts of South Carolina have decided that a summons is not a “process” within its Constitution, and that, therefore, it need not be in the name of the State. A summons issued in South Carolina by the circuit court of the United States need not be in the name of the United States in order to conform to the procedure of that state. *Chamberlain v. Mensing*, 47 F. 435 (1891).

Applied in *Southern Cotton Oil Co. v. Edgefield County v. Georgia-Carolina Power Co.*, 107 S. C. 532, 93 S. E. 195 (1917); 104 S. C. 311, 88 S. E. 801 (1916).

§ 32. Decisions of Supreme Court.

The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court made under this Constitution.

See Const. 1868, Art. IV, § 32.

§ 33. Sentence to labor on highways.

Circuit Courts and all Courts inferior thereto and municipal Courts shall have the power, in their discretion, to impose sentence of labor upon highways, streets and other public works upon persons by them sentenced to imprisonment.

This section makes no distinction between convicts on account of sex. *State v. Huffstetler*, 213 S. C. 319, 49 S. E. (2d) 585 (1948).

§ 34. Matters now pending.

All matters, civil and criminal, now pending within the jurisdiction of any of the Courts of this State shall continue therein until disposed of according to law.

Effect of S. C. Constitution as to trial justices.—Trial justices in office at the time the S. C. Constitution went into effect should act as magistrates until the legislature should pass a law regulating and defining the duties of magistrates. *In re Hooper*, 48 S. C. 149, 26 S. E. 466 (1897). **Applied** in *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896).

ARTICLE VI.

JURISPRUDENCE.

§ 1. Arbitration.

The General Assembly shall pass laws allowing differences to be decided by arbitrators, to be appointed by the parties who may choose that mode of adjustment.

See Const. 1868, Art. V, § 1.

Cross reference.—For Code sections providing for arbitration, see §§ 10-1901 to 10-1905.

Contract providing for arbitration of question of fact is enforced.—Under this section, a contract providing expressly or impliedly that the determination of some specific

question of fact by arbitration shall be a condition precedent to a right of action thereon will be upheld where the other party without good excuse failed so to arbitrate. *Jones v. Enoree Power Co.*, 92 S. C. 263, 75 S. E. 452 (1912).

§ 2. Change of venue.

It shall be the duty of the General Assembly to pass laws for the change of venue in all cases, civil and criminal, over which the Circuit Courts have original jurisdiction, upon a proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the County where such action or prosecution was commenced. The State shall have the same right to move for a change of venue that a defendant has for such offences as the General Assembly may prescribe. Unless a change of venue be had under the provisions of this Article the defendant shall be tried in the County where the offence was committed: *Provided, however,* That no change of venue shall

be granted in criminal cases until after a true bill has been found by the grand jury: *And provided, further*, That if a change be ordered it shall be to a county in the same Judicial Circuit.

See Const. 1868, Art. V, § 2.

Cross references.—As to specific section providing for change of venue by circuit court, see §§ 10-310 and 10-311. As to specific section providing for change of venue by magistrates, see § 43-131.

Object of section is to satisfy court that fair trial could not be had.—The object of this section is to satisfy the mind of the judge who hears the motion that a fair and impartial trial could not be had in the county where the action or prosecution was begun; and this conviction of the judge must be founded on sworn statements. *State v. Sullivan*, 39 S. C. 400, 17 S. E. 865 (1893).

This section is not exhaustive in its provisions, and it did not prevent the legislature from enacting § 10-310 (relative to change of venue in general) of the Code. *Utsey v. Charleston, S. & N. R. Co.*, 38 S. C. 399, 17 S. E. 141 (1893).

Statute may not ignore venue provisions.—A statute taking State's action on contract with individual out of general statutory rule as to venue is void. *State v. Columbia Ry. Gas & Elec. Co.*, 129 S. C. 455, 124 S. E. 758 (1924).

Meaning of "county where offense was committed."—The provision of this section entitling a defendant to trial in the "county where the offense was committed" is construed to mean where the offense was deemed committed under existing laws; and hence, where a person was wounded in C. county but died in S. county, defendant was properly indicted and convicted for the crime in the latter county. *State v. McCoomer*, 79 S. C. 63, 60 S. E. 237 (1908).

"Affidavit" defined.—An affidavit is a statement of fact under oath, reduced to writing, certified to by the officer before whom the same is made, and usually, though not necessarily unless required by

statute, signed by the affiant. *State v. Sullivan*, 39 S. C. 400, 17 S. E. 865 (1893).

Motion for change must be made on affidavit.—An act providing that the court may change the place of trial "when there is reason to believe that an impartial trial cannot be had therein," but making no provision that the motion therefor shall be upon affidavits, does not meet the requirements of this section. *Willoughby v. Northeastern R. Co.*, 46 S. C. 317, 24 S. E. 308 (1896).

Requirements are met when witnesses sworn and statements taken.—The requirements of this section are complied with when witnesses are introduced in open court, sworn by the presiding judge, and their statements, at the time and place, reduced to writing by the official stenographer. *State v. Sullivan*, 39 S. C. 400, 17 S. E. 865 (1893).

Judge may grant change in county constituting entire circuit.—In spite of the provision of this section that a change of venue shall be in a county in the same judicial circuit, a circuit judge in a county constituting an entire circuit has common law power to grant a change of venue in a criminal case in that circuit. *State v. Harvey*, 128 S. C. 494, 122 S. E. 860 (1924).

Change of venue is not reviewed absent abuse of discretion.—Where there is no abuse of discretion shown in granting a change of venue, the Supreme Court will not consider whether a proper showing was made in the court below authorizing the granting of the motion. *Carrol v. Charleston & S. R. Co.*, 61 S. C. 251, 39 S. E. 364 (1901).

Cited in *McCown v. Northeastern R. Co.*, 55 S. C. 384, 33 S. E. 506 (1899); *Winn v. Harby*, 166 S. C. 99, 164 S. E. 434 (1932); *Metropolitan Life Ins. Co. v. Stuckey*, 194 S. C. 469, 10 S. E. (2d) 3 (1940).

§ 3. Law and equity.

Justice shall be administered in a uniform mode of pleading without distinction between law and equity.

Object of section is to simplify pleading and practice.—The prime object of this section was to simplify the system of pleading and practice, so as to rid it as far as practicable of the stringent and extremely technical rules which had disfigured the system

that previously prevailed. *Jerkowski v. Marco*, 56 S. C. 241, 34 S. E. 386 (1899).

Equitable defense can be set up in a law case. *Bell v. Mackey*, 191 S. C. 105, 3 S. E. (2d) 816 (1939).

New trial may be granted on equity side

by motion and cause shown.—Under this section, a circuit judge presiding on the equity side of the court of common pleas may grant a new trial in such a cause on motion and cause shown, without adopting the old process of a petition for rehearing on a bill of review. *Covington v. Covington*, 47 S. C. 263, 25 S. E. 193 (1896).

Court of common pleas has equal jurisdiction with other like courts.—Under this section, S. C. Const. Art. 5, § 15, and §§ 15-6 and 15-7 of the Code, a court of common pleas has equal and coordinate jurisdiction in all respects with any other like court of any other county, except as to territorial jurisdiction. *Fidelity Fire Ins. Co. v. Windham*, 134 S. C. 373, 133 S. E. 35 (1926).

Complaint held not demurrable for failure to set out condition broken.—In view of this section, a complaint seeking to fore-

close a mortgage and alleging the death of the mortgagor, leaving defendant as his sole heir and distributee at law, is not demurrable for failure to set out a condition of the mortgage alleged to be broken and to state whether the mortgagor died testate or intestate, or to set forth any facts showing defendant to be the sole heir at law and distributee of the mortgagor. *Rutherford v. Johnson*, 49 S. C. 465, 27 S. E. 470 (1897).

Cited in *DeLoach v. Sarratt*, 55 S. C. 254, 33 S. E. 2, 35 S. E. 441 (1899); *Ex parte Carolina Nat. Bank*, 56 S. C. 12, 33 S. E. 781 (1899); *McKenzie v. Sifford*, 45 S. C. 496, 23 S. E. 622 (1896); *New York Life Ins. Co. v. Mobley*, 90 S. C. 552, 73 S. E. 1032 (1912); *Blackwell v. Faucett*, 117 S. C. 60, 108 S. E. 295 (1921).

§ 4. Statute public law.

Every Statute shall be a public law, unless otherwise declared in the Statute itself.

§ 5. Codification of laws.

The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment or election of a Commissioner, whose duty it shall be to collect and revise all the General statute laws of this State then of force as well as that which shall be passed from time to time, and to properly index and arrange the said statutes when so passed. And the said Commissioner shall reduce into a systematic Code the general statutes, including the Code of Civil Procedure, with all the amendments thereto, and shall, on the first day of the session for the year nineteen hundred and one, and at the end of every subsequent period of not more than ten years, report the result of his labors to the General Assembly, with such recommendations and suggestions as to the abridgement and amendments as may be deemed necessary or proper. Said report when ready to be made shall be submitted to the General Assembly at the first session in such manner as may be provided by law, but shall not be taken up for consideration until the next session of the said General Assembly. The said Code shall be declared by the General Assembly, in an Act passed according to the forms of this Constitution for the enactment of laws, to be the only general statutory law of the State; but no alterations or additions to any of the laws therein contained shall be made except by Bill passed under the formalities heretofore prescribed for the passage of laws. Provision shall be made by law for imposing such other duties as may be desired, for filing vacancies, regulating the term of office and the compensation of said Commissioner. And the General Assembly shall by committee inquire into the progress of his work at each session.

1932 (37) 1396; 1933 (38) 587.

See Const. 1868, Art. V, § 3.

Cross reference.—For section of the Code as to duties of Code Commissioner, see § 1-306.

Act incorporated in Code becomes law without reference to original title.—When an act is incorporated in the Code in accord-

ance with this section, it beomes statutory law without reference to its title as originally enacted, and the objection that the subject of the act does not correspond with its title cannot be raised. *Parks v. Laurens Cotton Mills*, 75 S. C. 560, 56 S. E. 234 (1907).

Section repeals all laws not included in Code.—The inevitable consequence of this section is to repeal all general statutory laws which are not included in the Code because if the Code contains the only general statutory law of the State, of course there can be none other. *Nexsen v. Ward*, 96 S. C. 313, 80 S. E. 599 (1914); *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916).

Even if new Code section provides

against repeal of prior acts.—Acts relative to appointment of school district trustees to permit their election in certain counties are inoperative under this section for failure to incorporate the amendments bodily in the 1922 Code, though the new Code section provides that nothing therein should be construed to repeal previous acts providing for different methods of selection of school trustees. *State v. Meares*, 148 S. C. 118, 145 S. E. 695 (1928).

Applied in *Greenville v. Pridmore*, 162 S. C. 52, 160 S. E. 144 (1931).

Cited in *Edwards v. Southern Ry. Co.*, 66 S. C. 277, 44 S. E. 748 (1903); *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927); *Craig v. Bell*, 211 S. C. 473, 46 S. E. (2d) 52 (1948).

§ 6. Prisoner lynched through negligence of officer; penalty on officer; county liable for damages.

In the case of any prisoner lawfully in the charge, custody or control of any officer, State, County or municipal, being seized and taken from said officer through his negligence, permission or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and, upon true bill found, shall be deposed from his office pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State. It shall be the duty of the prosecuting Attorney within whose Circuit or County the offence may be committed to forthwith institute a prosecution against said officer, who shall be tried in such County, in the same circuit, other than the one in which the offence was committed, as the Attorney General may elect. The fees and mileage of all material witnesses, both for the State and for the defence, shall be paid by the State Treasurer, in such manner as may be provided by law: *Provided*, In all cases of lynching when death ensues, the County where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars to the legal representatives of the person lynched: *Provided, further*, That any County against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any Court of competent jurisdiction.

Cross reference.—For section of the Code providing for liability by county for lynching, see § 10-1961.

Section should be liberally construed.—This section, and § 10-1961 of the Code, should receive a liberal interpretation to the end that the remedy prescribed should not be denied in any case coming substantially within their spirit. *Kirkland v. Allendale County*, 128 S. C. 541, 123 S. E. 648 (1924).

Action is for money damages only.—An action for damages against a county for lynching plaintiff's intestate, under this section, is for money only, and at common law was triable by jury. *Best v. Barnwell County*, 114 S. C. 123, 103 S. E. 479 (1920).

Meaning of "without regard to the conduct of the officers."—The words, "without regard to the conduct of the officers," when considered in connection with the evil which

the Constitution intended to remedy, must be construed to mean "without reference to what has been said in regard to the conduct of the officers," or in other words, without reference to other provisions of the section. *Brown v. Orangeburg County*, 55 S. C. 45, 32 S. E. 764 (1899).

"Mob" means unlawful assembly.—Under this section, an instruction that "mob" means the same thing as "unlawful assemblage" is a proper instruction. *Cantey v. Clarendon County*, 101 S. C. 141, 85 S. E. 228 (1915).

But "lynching" has no technical legal meaning.—The word "lynching" has no technical legal meaning, but is merely a descriptive phrase which is universally understood to signify the illegal infliction of punishment by a combination of persons for an alleged crime. *Kirkland v. Allendale County*, 128 S. C. 541, 123 S. E. 648 (1924); *Green v. Greenville County*, 176 S. C. 433, 180 S. E. 471 (1935).

Section limits liability to cases where death ensues.—This section limits the liability of counties in cases of mob violence to cases where death ensues to the party mobbed or lynched. *Brazzill v. Lancaster County*, 132 S. C. 347, 128 S. E. 728 (1925).

And includes mob acts contributing to death of prisoner.—Where a mob bent on killing a negro prisoner took him from sheriff and, while seriously wounded and bleeding, carried him a considerable distance in

an automobile and left him lying therein more dead than alive, without medical or other attention, there was a "lynching" rendering county liable under this section, if such acts contributed to his death, even though he was dead before his body was hanged or burned. *Kirkland v. Allendale County*, 128 S. C. 541, 123 S. E. 648 (1924).

Such as lynching on removal from one county to another.—Taking deceased out of Pickens County jail and killing him in Greenville County constituted sufficient facts of mob violence to bring action against Greenville County under this section. *Earle v. Greenville*, 215 S. C. 539, 56 S. E. (2d) 348 (1949).

But victim need not be prisoner.—This section authorizes a recovery against the county, whether the one lynched was a prisoner or not. *Brown v. Orangeburg County*, 55 S. C. 45, 32 S. E. 764 (1899).

Section does not apply to destruction of tobacco by mob.—If § 16-107 of the Code were construed to mean that damages resulting from destruction of a crop of tobacco by a mob of disorderly and riotous persons should be paid by the county, then such statute would be repugnant to this section of the Constitution. *Warr v. Darlington County*, 181 S. C. 254, 186 S. E. 920 (1936).

Stated in *Green v. West*, 161 S. C. 161, 159 S. E. 23 (1931).

ARTICLE VII.

COUNTIES AND COUNTY GOVERNMENT.

§ 1. Formation of new counties; county seats and name.

The General Assembly may establish new Counties in the following manner: Whenever one-third of the qualified electors within the area of each section of an old County proposed to be cut off to form a new County shall petition the Governor for the creation of a new County, setting forth the boundaries and showing compliance with the requirements of this Article, the Governor shall order an election, within a reasonable time thereafter, by the qualified electors within the proposed area, in which election they shall vote "Yes" or "No" upon the question of creating said new County; and at the same election the question of a name and a County seat for such County shall be submitted to the electors.

Construction.—When two sections of a constitution are inconsistent, effect will ordinarily be given to that which is in harmony with other provisions rather than to that which is inconsistent with more than one provision. *Massey v. Glenn*, 106 S. C. 53, 90 S. E. 321 (1916).

For example, the word "shall" in S. C. Const., Art. 7, § 2, which provides that if two thirds of the qualified electors shall vote "yes," then the General Assembly at the next session "shall" establish such new county, is in conflict with the word "may" in this section which provides that the

General Assembly "may" establish new counties, etc. It is also in conflict with the construction necessarily placed on the word "shall" in that part of this section which provides that at the same election the question of a county seat shall be submitted to the electors. *Massey v. Glenn*, 106 S. C. 53, 90 S. E. 321 (1916).

"Old county" and "new county" defined.—This section shows clearly that the convention meant by "old county" any county then in existence, and by "new county" only those counties proposed and in process of formation under the law. *Rhame v. Du Rant*, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912).

All qualified electors in proposed county may vote.—All qualified electors within the territory to be included in the new county are entitled to vote on that question, and the legislature cannot deny that right by failing to provide a means of voting for such electors in a statute designed to carry out the constitutional provision. *Callison v. Peeples*, 102 S. C. 256, 86 S. E. 635 (1915).

And means must be provided for qualified electors to vote. *Callison v. Peeples*, 102 S. C. 256, 86 S. E. 635 (1915).

Two-thirds vote is only on issue of creating new county.—This and the following section require a two-thirds vote only on the question of the creation of a new county and not on the question of a name or county seat. *State v. Parler*, 52 S. C. 207, 29 S. E. 651 (1898).

This section does not refer to divisions of the county such as townships, school districts, and the like, but means that portion of the old county which is proposed to be embraced within the new county without regard to county or school district lines. *Fraser v. James*, 65 S. C. 78, 43 S. E. 292 (1902).

Governor alone determines compliance with election prerequisites.—This section imposes exclusively on the Governor the duty to determine whether there has been a compliance with the Constitution preparatory to the ordering of an election for the formation of a new county, and courts have no power to interfere with him in the exercise of his discretion. *Lamar v. Croft*, 73 S. C. 407, 53 S. E. 540 (1906).

And may grant or refuse amendment to petition.—It is within the discretion of the Governor to refuse or allow an amendment to a petition for the creation of a new county, setting forth with more definiteness the boundaries thereof. *Parler v. Fogle*, 78 S. C. 570, 59 S. E. 707 (1907).

And courts cannot control the Governor's prerogative, under this section, in determining whether constitutional requirements preparatory to holding an election to establish a new county have been met. *State v. Weeks*, 87 S. C. 474, 70 S. E. 898 (1911).

But one Governor can review and vacate an order of his predecessor calling an election on a satisfactory showing of noncompliance with some constitutional requirement, especially if no private or property right is thereby destroyed. *State v. Weeks*, 87 S. C. 474, 70 S. E. 898 (1911).

Constitution does not establish definite form of county government.—An examination of this Article of the S. C. Constitution, relating to counties and county government, will not show a single provision with regard to the creation of a constitutional office, or any attempt whatever to define or create a corporate authority, or to establish a uniform or definite form of county government. In this particular the present State Constitution differs materially from that of 1868. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Legislature may prescribe powers of new county.—The fact that the S. C. Constitution provides for creation of county does not deprive legislature of right to prescribe its powers. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

New county may not take over assets of parent county.—This article contains regulations pertinent to the creation of new counties and the transfer of territory from one county to another, with provisions for the moving territory to carry with it its just portion of the indebtedness of its old county. But there is no provision for it to take any of the assets of its former parent county. *Gamble v. DuBose*, 215 S. C. 252, 54 S. E. (2d) 803 (1949).

Hydroelectric system is within proper county purposes.—Erection, maintenance, and operation of hydroelectric system is within proper corporate purposes of county, and revenue bonds issued for construction of plant are valid obligations of the county. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

Cited in *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898); *State v. Board of Canvassers*, 79 S. C. 414, 60 S. E. 967 (1908); *Robinson v. McCown*, 104 S. C. 285, 88 S. E. 807 (1916); *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

§ 2. Section of old county to be cut off.

If two-thirds of the qualified electors voting at such election shall vote "Yes" upon such questions, then the General Assembly at the next session shall establish such new County: *Provided*, No section of the County proposed to be dismembered shall be thus cut off without consent by a two-thirds vote of those voting in such section; and no County shall be formed without complying with all the conditions imposed in this Article. An election upon the question of forming the same proposed new County shall not be held oftener than once in four years.

All requirements in formation of new county must be met.—Those who seek the formation of a new county must see that all the constitutional requirements are complied with. *State v. Board of Registration*, 87 S. C. 474, 70 S. E. 898 (1911).

Void election does not bar election one year later.—An attempted election as to formation of a new county, set aside as void, does not bar another election on the same question a year later. *Robinson v. McCown*, 104 S. C. 285, 88 S. E. 807 (1916).

County formed under Constitution of 1895 is not an "old county."—*Rhame v. DuRant*, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912).

Failure of election in one of two counties where held.—Where an election is held in

portions of two counties on proposition of forming new county out of portions of territory of each, and the election fails in one county, the validity of the election held in the other is immaterial. *State v. State Board of Canvassers*, 86 S. C. 55, 67 S. E. 1072 (1910).

As to legislative determination of formation of new county, see *Fraser v. James*, 65 S. C. 78, 43 S. E. 292 (1902).

Cited in *State v. Parler*, 52 S. C. 207, 29 S. E. 651 (1898); *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865 (1898); *Massey v. Glenn*, 106 S. C. 53, 90 S. E. 321 (1916) *Lamar v. Croft*, 73 S. C. 407, 53 S. E. 540 (1906); *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

§ 3. Inhabitants; taxable property; area of new county.

No new County hereafter formed shall contain less than one one-hundred and twenty-fourth part of the whole number of inhabitants of the State, nor shall it have less assessed taxable property than one and one half million of dollars as shown by the last tax returns, nor shall it contain less area than four hundred square miles.

Quoted in *Rhame v. Du Rant*, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912).

Cited in *State v. Board of Registration*, 87 S. C. 474, 70 S. E. 898 (1911); *Rhame v.*

DuRant, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912); *Robinson v. McCown*, 104 S. C. 285, 88 S. E. 807 (1916).

§ 4. Area, taxable property and inhabitants of old county.

No old County shall be reduced to less area than five hundred square miles, to less assessed taxable property than two million dollars, nor to a smaller population than fifteen thousand inhabitants.

Counties created since S. C. Constitution adopted may be reduced.—This section of the S. C. Constitution, forbidding in the creation of new counties the reduction of "old counties" to a less area than 500 square miles, does not forbid the reduction below 500 square miles of counties created since the Constitution was adopted, the words

"old county" being used to designate only counties then existing. *Rhame v. DuRant*, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912); *Robinson v. McCown*, 104 S. C. 285, 88 S. E. 807 (1916).

Cited in *Rhame v. DuRant*, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912); *Callison v. Peeples*, 102 S. C. 256, 86 S. E. 635 (1915).

§ 5. Eight mile limit.

In the formation of new Counties no old County shall be cut within eight miles of its courthouse building.

Quoted in Rhame v. DuRant, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912); Fraser v. James, 65 S. C. 78, 43 S. E. 292 (1902); State v. Hammond, 66 S. C. 219, 44 S. E. 797 (1903).

Cited in Callison v. Peeples, 102 S. C. 256, 86 S. E. 635 (1915); Robinson v. McCown, 104 S. C. 285, 88 S. E. 807 (1916).

§ 6. Indebtedness.

All new Counties hereafter formed shall bear a just apportionment of the valid indebtedness of the old County or Counties from which they have been formed.

Cited in Rhame v. DuRant, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912); Robinson v. McCown, 104 S. C. 285, 88 S. E. 807

(1916); State v. McMillan, 52 S. C. 60, 29 S. E. 540 (1898).

§ 7. Alteration of county lines.

The General Assembly shall have the power to alter County lines at any time: *Provided*, That before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one County and given to another, and shall have received two-thirds of the votes cast: *Provided, further*, That the change shall not reduce the County from which the territory is taken below the limits prescribed in Sections 3, 4 and 5 of this Article: *Provided*, That the proper proportion of the existing County indebtedness of the section so transferred shall be assumed by the County to which the territory is transferred.

Cited in Clarendon County v. Sumter County, 116 S. C. 258, 108 S. E. 103 (1921); Rhame v. DuRant, 93 S. C. 217, 75 S. E. 1028, 76 S. E. 611 (1912); Callison v. Pee-

ples, 102 S. C. 256, 86 S. E. 635 (1915); Robinson v. McCown, 104 S. C. 285, 88 S. E. 807 (1916); McLure v. McElroy, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

§ 8. Removal of county seat.

No County Seat shall be removed except by a vote of two-thirds of the qualified electors of said County voting in an election held for that purpose, but such election shall not be held in any County oftener than once in five years.

Cited in Paris Mountain Water Co. v. Greenville, 110 S. C. 36, 96 S. E. 545 (1918).

§ 9. Election district; body corporate.

Each County shall constitute one election district, and shall be a body politic and corporate.

County may be divided into representation areas.—Section 14-1162, dividing Charleston County into five areas of representation, does not violate this section of the Constitution. Gaud v. Walker, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

And may be authorized to operate hydroelectric plant.—Because section declares counties bodies politic and corporate does

not restrict legislature's right to authorize county to build and operate hydroelectric plant. Park v. Greenwood County, 174 S. C. 35, 176 S. E. 870 (1934).

Cited in Fooshe v. McDonald, 82 S. C. 22, 63 S. E. 3 (1908); Heape v. Berkeley County, 80 S. C. 32, 61 S. E. 203 (1908); McLure v. McElroy, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

§ 10. Consolidation of two or more counties.

The General Assembly may provide for the consolidation of two or more existing Counties if a majority of the qualified electors of such Counties voting at an election held for that purpose shall vote separately therefor, but such election shall not be held oftener than once in four years in the same Counties.

Cited in *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

§ 11. Townships; body corporate; township government.

Each of the several townships of this State, with names and boundaries as now established by law, shall constitute a body politic and corporate, but this shall not prevent the General Assembly from organizing other townships or changing the boundaries of those already established; and the General Assembly may provide such system of township government as it shall think proper in any and all the Counties, and may make special provision for municipal government and for the protection of chartered rights and powers of municipalities: *Provided*, That this Section shall not apply to the following townships in the following Counties: Dunklin and Oaklawn in the County of Greenville; the Townships of Cokesbury, Ninety Six and Cooper, in the County of Greenwood; Sullivan Township, in the County of Laurens; Huiett and Pine Grove, in the County of Saluda. That the corporate existence of said townships be, and the same is hereby, destroyed, and all officers under said townships are abolished, and all corporate agents removed.

1902 (23) 1227; 1903 (24) 3.

I. General Consideration.

II. Application of Section.

Cross References.

As to constitutional prohibition against local or special laws, see S. C. Const., Art. 3, § 34. As to formation of new counties, see note to S. C. Const., Art. 7, § 1.

I. GENERAL CONSIDERATION.

Constitutionality.—An amendment to this section may not impair obligation of existing contracts. *Smith v. Walker*, 74 S. C. 519, 54 S. E. 779 (1906). See also, *Graham v. Folsom*, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464 (1906).

Section is construed with S. C. Const., Art. 3, § 34.—This section may not be soundly applied to uphold every special legislative provision with respect to municipal government in disregard of the inhibition of S. C. Const., Art. 3, § 34. *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

The authority to make special provision for municipal government as contained in this section was evidently framed in view of the provisions of S. C. Const., Art. 3, § 34, and was intended to give the legislature

a wider latitude in the making of special provisions for county and township government. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

General Assembly may control government of county.—This section has been repeatedly construed to give the General Assembly complete control over the government and other internal affairs of the counties of the State. *Reese v. Hinnant*, 187 S. C. 474, 198 S. E. 403 (1938).

Through delegation of powers to county.—The legislature may grant county power to discharge such governmental functions as it thinks proper to promote prosperity, safety, convenience, health and common good of county's inhabitants. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

But police power may not be delegated to county.—This section, granting authority to make special provision for municipal government, must be interpreted in the light of all other provisions and restrictions contained in the Constitution, and when so construed, does not permit the General Assembly to delegate the police power to some particular county. *Sansing v. Cherokee County Tourist Camp Board*, 195 S. C.

7, 10 S. E. (2d) 157 (1940); *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

"Municipal government" relates to counties and not cities.—*Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Floyd v. Calvert*, 114 S. C. 116, 103 S. E. 82 (1920); *State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922); *Spartanburg County v. Miller*, 135 S. C. 348, 132 S. E. 673 (1924); *Carolina Grocery Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381 (1901).

The term "municipal government" has been uniformly construed by the Supreme Court to embrace the governmental affairs of counties. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

"Township" is a division of the county made for governmental purposes, and under the express provisions of this section is a body politic. *Gallishaw v. Jackson*, 99 S. C. 342, 83 S. E. 454 (1914); *Battle v. Willcox*, 128 S. C. 500, 122 S. E. 516 (1924).

"County" and "township" are separate entities for certain taxation. Where an act imposes a uniform tax in a particular township, S. C. Const., Art. 10, § 1, would not be violated. *Nettles v. Cantwell*, 112 S. C. 24, 99 S. E. 765 (1919).

Section does not qualify constitutional ban on certain taxes.—This section contains no qualification of the ban of S. C. Const., Art. 10, § 6 against taxes and bond issues for other than the stated objects and ordinary county purposes mentioned in such ban. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

II. APPLICATION OF SECTION.

County may make appropriations, levy taxes, etc.—Sections 14-1169 and 14-1191, which give the Charleston County council power to make appropriations, levy taxes, incur indebtedness and issue bonds, are not an invalid delegation to the county council of legislative authority in violation of S. C. Const., Art. 3, § 1, which vests the legislative power of the State in the General Assembly, but such authority may be delegated under this section and S. C. Const., Art. 10, § 5. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Office of delinquent tax collector is local government matter.—Section 65-2191, cre-

ating the office of delinquent tax collector in Pickens County and transferring certain powers formerly vested in the sheriff to the collector, is a matter of local government dealing with the personnel involved in the enforcement of delinquent taxes within the provisions of this section of the Constitution, and is not a matter of State legislation in the sense contemplated by the requirement of uniformity contained in S. C. Const., Art. 3, § 34. *Craig v. Pickens County*, 189 S. C. 164, 200 S. E. 825 (1939).

Abolishing office of county supervisor.—An act, 25 Stat. 1203, abolishing the office of the county supervisor for Fairfield County and changing the townships of the county, is valid. *Fooshe v. McDonald*, 82 S. C. 22, 63 S. E. 3 (1908).

Repeal of charter of town.—An act, 25 Stat. 280, repealing charter of town of Moultrieville and establishing township government for Sullivan's Island as township of Charleston County, if such repeal affects merely public government of municipality, is permissible. *Board Township Com'rs v. Buckley*, 82 S. C. 352, 64 S. E. 163 (1909).

For additional related cases, see *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928), holding the townships of Christ Church Parish and St. James Santee, Charleston County, to be bodies politic; *Folsom v. Ninety Six*, 159 U. S. 611, 16 S. Ct. 174, 40 L. Ed. 278 (1895).

Applied in *DeLoach v. Scheper*, 188 S. C. 21, 198 S. E. 409 (1938).

Cited in *Askew v. Smith*, 126 S. C. 159, 119 S. E. 378 (1923); *Ruff v. Boulware*, 133 S. C. 420, 131 S. E. 29 (1925); *Law v. Spartanburg*, 148 S. C. 229, 146 S. E. 12 (1928); *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930); *Salley v. McCoy*, 186 S. C. 1, 195 S. E. 132 (1932); *Gamble v. Clarendon County*, 188 S. C. 250, 198 S. E. 857 (1938); *Ridgill v. Clarendon County*, 188 S. C. 460, 199 S. E. 683 (1938); *Parrott v. Gourdin*, 205 S. C. 364, 32 S. E. (2d) 14 (1944); *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946); *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946); *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

§ 12. Boundaries of counties; boundaries of Saluda and Edgefield.

Until changed by the General Assembly, as allowed by this Constitution, the boundaries of the several counties shall remain as now established, except that the boundaries of the County of Edgefield shall undergo such changes as are made necessary by the formation of a new County from a portion of Edgefield,

to be known as Saluda, the boundaries of which are set forth in a Constitutional Ordinance. The election ordered in said ordinance for the location of its County seat shall be held under the Constitution and laws now of force. And the General Assembly shall provide for the assessment of property in the County of Saluda for the fiscal year beginning January first, eighteen hundred and ninety-six, and for the collection of said taxes when assessed.

Cited in *Fooshe v. McDonald*, 82 S. C. 22, 63 S. E. 3 (1908).

§ 13. Judicial and Congressional districts.

The General Assembly may at any time arrange the various Counties into Judicial Circuits, and into Congressional Districts, including the County of Saluda, as it may deem wise and proper, and may establish or alter the location of voting precincts in any County.

Cited in *Fooshe v. McDonald*, 82 S. C. 22, 63 S. E. 3 (1908); *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

§ 14. No county line through city or town.

Hereafter no County lines shall be so established as to pass through any incorporated city or town of this State.

ARTICLE VIII.

MUNICIPAL CORPORATIONS AND POLICE REGULATIONS.

§ 1. Organization and classification of municipal corporations.

The General Assembly shall provide by general laws for the organization and classification of municipal corporations. The powers of each class shall be defined so that no such corporation shall have any powers or be subject to any restrictions other than all corporations of the same class. Cities and towns now existing under special charters may reorganize under the general laws of the State, and when so reorganized their special charters shall cease and determine.

- I. General Consideration.
- II. Application of Section.
 - A. Acts Contravening Section.
 - B. Acts Not Contravening Section.

Cross Reference.

As to General Assembly's power to enact special provisions in general laws, see note to S. C. Const., Art. 3, § 34, subdiv. 10.

I. GENERAL CONSIDERATION.

Uniformity is purpose of section.—One of the purposes sought to be accomplished by this section is to make uniform the law on like subjects. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

This Article does not apply to townships.—The whole trend of this Article indicates its application to cities and towns and not to townships, and the action of the General Assembly in making a classification of cities and towns, and none of townships, lends color to this construction. *Askew v. Smith*, 126 S. C. 159, 119 S. E. 378 (1923).

Nor this section to creation of municipal courts.—It is not the intention of the Constitution to make the creation, jurisdiction, and incidents of a municipal court the subject of a "general law" which must be in force in every county in the State and which, while it may contain special provisions making its effect different in certain counties, cannot exempt them from its entire operation. Thus, the provision of an act

providing a method of preparing and drawing jurors in the recorder's court for the city of Columbia is valid. *Columbia v. Smith*, 105 S. C. 348, 89 S. E. 1028 (1916).

Section forbids restricting or adding to power of part of class.—An act which gives power to or restricts one of a class of cities is forbidden by this section. *Floyd v. Calvert*, 114 S. C. 116, 103 S. E. 82 (1920).

Special provisions may be in general laws.—That there may be special provisions in general laws is true. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Floyd v. Calvert*, 114 S. C. 116, 103 S. E. 82 (1920).

But may not deprive laws of general character.—If a special provision robs a law of its general character, it is plainly not permissible. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Floyd v. Calvert*, 114 S. C. 116, 103 S. E. 82 (1920).

Reincorporation of city supersedes original charter.—The reincorporation of a city under the general laws superseded the old charter and an act which gave it special powers in regard to a board of fire commissioners, as the act was in the nature of an amendment to the original charter, and to have held it otherwise would be to contravene this section of the Constitution. *Beattie v. City Council*, 113 S. C. 541, 102 S. E. 751 (1920). See also, *Rutledge v. Greenville*, 155 S. C. 520, 152 S. E. 700 (1930).

But involves no break in corporate existence.—While this section ordains that the old charter shall cease and determine, clearly it does not ordain expressly or by implication that the corporate life of the town shall be cut off even for a moment. The provision is not that the existing city or town shall go out of existence, but that one charter shall be substituted for another; not that there shall be destruction of the city or town, but merely reorganization. This substitution of one charter for another and reorganization of the municipality is not a break in the corporate existence of the city or town, but a continuation of it with the powers and franchises conferred by the general law. *Black v. Fishburne*, 84 S. C. 451, 66 S. E. 681 (1910).

And proceedings begun under old charter may be completed.—By the provisions of this section, the property of the municipality acquired under the old charter continues its property under the new, its contracts legally made under its old charter remain valid under the new, and all corporate proceedings legally undertaken while the old charter was in force may be carried to completion after the issuance

of the new charter, unless they will result in the doing of an act which could not be legally done under the new charter. *Black v. Fishburne*, 84 S. C. 451, 66 S. E. 681 (1910).

Under this section, municipal corporations can issue bonds maturing beyond their corporate life under their charters, the statutes in effect being amendments of their original charters extending their corporate existence as to such bonds until their payment. Thus the surrender of their special charter and reincorporation under the general laws would not affect the validity of bonds, even if actually issued after incorporation under the general law. *Black v. Fishburne*, 84 S. C. 451, 66 S. E. 681 (1910).

Legislature may establish municipal court.—*Greenville v. Foster*, 101 S. C. 318, 85 S. E. 769 (1915).

The power conferred upon the General Assembly to provide by general laws for the reorganization and classification of municipal corporations includes the power to establish municipal courts. *Greenville v. Foster*, 101 S. C. 318, 85 S. E. 769 (1915).

Quoted in *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Cited in *Luther v. Wheeler*, 73 S. C. 83, 52 S. E. 874 (1905); *Com'rs v. Bank of Commerce*, 97 U. S. 374, 24 L. Ed. 1060 (1878).

II. APPLICATION OF SECTION.

A. Acts Contravening Section.

Act providing for cotton tax.—Act which allowed some towns to tax merchants selling cotton and prohibited others from doing so contravenes this section prohibiting special laws. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918).

Without reasonable basis for classification.—A law prohibiting 40 named towns without some reasonable basis for classification to collect a license tax from persons engaged in the sale of cotton, no mention being made of other towns, would seem to be a local or special law in form and in essence. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918).

Act conferring right to vote on nonresidents.—In *Thomas v. Macklen*, 186 S. C. 290, 195 S. E. 539 (1938), the court held unconstitutional sections of an act which conferred upon nonresident freeholders of a proposed incorporated town the right to vote and to hold office therein, on the ground that such act was obnoxious to this section and other constitutional provisions.

Act providing for election on abandoning form of city government.—An act which

required an election on the question of abandoning the commission form of government in a named city is contrary to this section. *Floyd v. Calvert*, 114 S. C. 116, 103 S. E. 82 (1920).

Statutes authorizing acquisition of waterworks.—Provisions of the Code, which authorized three cities to acquire waterworks systems by condemnation, violate this section when there is a fourth city in the same class. *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916).

B. Acts Not Contravening Section.

Act abolishing township highway commission and devolving all their duties upon an advisory board and the county engineer is not in conflict with this section in view

of S. C. Const., Art. 7, § 11. *Askew v. Smith*, 126 S. C. 159, 119 S. E. 378 (1923).

Act providing for erection of tuberculosis hospital for Spartanburg County and for selection of site by board of trustees of Spartanburg General Hospital is not violative of this section as subjecting city of Spartanburg to restrictions other than those imposed on other corporations of the same class. *Law v. Spartanburg*, 148 S. C. 229, 146 S. E. 12 (1928).

Statute classifying cities with commission form of government.—In *Forde v. Owens*, 160 S. C. 168, 158 S. E. 147 (1931), a statute classifying cities adopting commission form of government was held constitutional, notwithstanding it contained some special provisions.

§ 2. Electors must consent to organization.

No city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; such consent to be ascertained in the manner and under such regulations as may be prescribed by law.

Majority of all electors is necessary to carry election.—*Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Section does not apply to municipal annexation.—This section of the Constitution by its own specific language relates to the original organization or incorporation of a municipality, and does not apply to subsequent annexation. *Whitmire v. Cass*, 213 S. C. 230, 49 S. E. (2d) 1 (1948).

"Organized" means "incorporated."—The word "organized" in this section is synonymous with the word "incorporated." *Whitmire v. Cass*, 213 S. C. 230, 49 S. E. (2d) 1 (1948).

Act conferring right to vote on nonresidents.—See note to S. C. Const., Art. 8, § 1.

Cited in *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

§ 3. Taxes.

The General Assembly shall restrict the powers of cities and towns to levy taxes and assessments, to borrow money and to contract debts, and no tax or assessment shall be levied or debt contracted except in pursuance of law, for public purposes specified by law.

Restriction on tax power is not upon legislature.—The restriction of this section as to the power of taxation is not upon the legislature, but the injunction is to the legislature to restrict the powers of the town to levy taxes. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

This section relates to bonded indebtedness of municipalities.—*Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Which may not exceed eight per cent of value of taxable property therein.—The bonded indebtedness of an incorporated city or town may not exceed eight per cent of the assessed value of its taxable property;

but up to that limit the city may incur bonded indebtedness, as long as the expenditures be for corporate or public purposes. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

And does not authorize creation of any debt.—For the creation of a debt of any description, it is necessary for municipal authorities to find either legislative authority or warrant in some other provision of the Constitution itself than in this section. *Luther v. Wheeler*, 73 S. C. 83, 52 S. E. 874 (1905).

It is modified by S. C. Const., Art. 8, § 7.—This section is modified by S. C. Const.,

Art. 8, § 7, which allows indebtedness to be incurred in anticipation of the collection of taxes. *Luther v. Wheeler*, 73 S. C. 83, 52 S. E. 874 (1905).

Which allows debts to be made for legitimate purposes.—This section of the Constitution, providing that no debt shall be contracted except in pursuance of law for public purposes specified by law, is necessarily modified by S. C. Const., Art. 8, § 7, which allows indebtedness to be incurred in anticipation of the collection of taxes. There is in this last section no specification of any particular purposes for which such debts may be contracted, and the meaning, therefore, manifestly is that they may be contracted for any legitimate corporate purpose. *United States Rubber Products v. Batesburg*, 183 S. C. 49, 190 S. E. 120 (1937).

And is construed with other sections of S. C. Constitution.—This section, Art. 8, § 7, Art. 2, § 13, Art. 10, § 6, Art. 10, § 5, and Art. 10, § 13 of the S. C. Constitution, when considered together, show clearly how careful the framers of the Constitution were to throw safeguards around bonded indebtedness, whether it was of the State, municipalities, or political divisions or subdivisions of the State. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Section contemplates corporate utilities as public purposes.—This section and S. C. Const., Art. 8, §§ 4 and 5 contemplate that the construction and operation of water and electric plants, not only for the purposes of the corporation, strictly speaking, but for supplying citizens of the municipality with light and water, shall be a public purpose for which the municipality may incur debts

and levy taxes. *Irvine v. Greenwood*, 89 S. C. 511, 72 S. E. 228 (1911).

And also recreation center and pool.—A recreation center and a swimming pool are within the scope of public or corporate purposes and, therefore, are objects for which taxes may be levied or indebtedness incurred. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Act giving town council power to tax does not contravene section.—The power of taxation given by an act of the legislature to the town council of Beaufort is not in conflict with this section. *State v. Beauford*, 39 S. C. 5, 17 S. E. 355 (1893).

And legislature may vest county board with power to tax.—An act vesting a county board of education of a certain county with power to tax for support of high schools was held not violative of constitutional provisions intended to limit public debt, among which is this section. *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

Section does not repeal act conferring power to assess license tax.—The act of 1871, 14 Stats. 569, conferring on the city of Columbia power to assess license tax, is not repealed by this section. *Florida Central & P. R. Co. v. Columbia*, 54 S. C. 266, 32 S. E. 408 (1899).

Cited in Germania Sav. Bank v. Darlington, 50 S. C. 337, 27 S. E. 846 (1897); *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *Com'rs v. Bank of Commerce*, 97 U. S. 374, 24 L. Ed. 1060 (1878); *Stelmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898); *Robinson v. Columbia*, 116 S. C. 193, 107 S. E. 476 (1921).

§ 4. Street railway, etc.

No law shall be passed by the General Assembly granting the right to construct and operate a street or other railway, telegraph, telephone or electric plant, or to erect water or gas works for public uses or to lay mains for any purpose, without first obtaining the consent of the local authorities in control of the streets or public places proposed to be occupied for any such or like purposes.

Section is limitation on power of legislature.—This provision does not confer any authority upon a municipality, but is a limitation on the power of the General Assembly. *Brookland v. Broad River Power Co.*, 172 S. C. 115, 173 S. E. 71 (1934).

Which may grant rights conditioned upon obtaining proper consent.—An act passed by the General Assembly, granting a right

to lay and operate railroad tracks along a street but requiring that the consent of the proper authorities be first obtained, is not in violation of this section. *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905).

Section contemplates corporate utilities as public purposes.—See note to S. C. Const., Art. 8, § 3.

For additional related case, see Conway v. Atlantic Coast Line R. Co., 20 F. (2d) 250 (1926).

Cited in Riley v. Charleston Union Station Co., 67 S. C. 84, 45 S. E. 149 (1903).

§ 5. Waterworks systems; plants furnish lights and ice.

Cities and towns may acquire, by construction or purchase, and may operate, waterworks systems and plants for furnishing lights and ice manufacturing plants and may furnish water and lights and ice, to individuals, firms and private corporations for a reasonable compensation: *Provided*, That no such construction or purchase shall be made except upon a majority vote of the electors in said cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns.

1920 (31) 1707; 1921 (32) 273.

- I. General Consideration.
- II. Application of Section.
- III. Elections.

Cross References.

As to requirements of petition from majority of freeholders of city as condition precedent to election to bond city, see note to S. C. Const., Art. 2, § 13. As to provisions relating to incurring bonded debts by cities and towns and requiring elections therefor, see note to S. C. Const., Art. 8, § 7. As to provisions for levying taxes for corporate purposes and limiting bonded debts, see note to S. C. Const., Art. 10, § 5. As to provision for taking private property for public use only on making just compensation therefor, see note to S. C. Const., Art. 1, § 17. As to provisions prohibiting taking property without due process of law, see U. S. Constitution, Fifth Amendment (limitations on Federal Government), and U. S. Constitution, Fourteenth Amendment (limitation on powers of states). As to power of municipal corporations to condemn lands for waterworks, see § 59-222. As to construction and operation of waterworks and electric plants, issuance of bonds for such, elections required and power of condemnation in relation thereto, see §§ 59-241 to 59-245 and 59-247. As to provisions for issuance of general obligation bonds by cities and towns, see § 47-833.

I. GENERAL CONSIDERATION.

Historical note.—The power of a municipality to operate an electric plant for furnishing lights to private residents did not exist in this State until the S. C. Constitution was adopted in 1895. *Union v. Board of Com'rs*, 91 S. C. 248, 74 S. E. 496 (1912). And a city's purchase and maintenance of one, to the extent of furnishing lights to private residences and places of business

at a compensation, were ultra vires. *Mauldin v. City Council*, 33 S. C. 1, 11 S. E. 434 (1890).

This section achieves three objectives.—This section (1) confers the right to purchase; (2) it limits the right to a majority vote of the electors of the city; and (3) it by necessary implication prescribes the way in which that majority shall be ascertained, that is to say, as electors voting on bonded indebtedness. *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917).

And it is self-executing.—This section and S. C. Const., Art. 8, § 7, providing that cities may acquire waterworks and provide for payment therefor, are self-executing. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918). See also, *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931).

City can acquire waterworks and light plant only as provided here.—*Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898).

An act which authorizes cities and towns to construct and operate waterworks, to raise funds for that purpose by the issue of bonds when approved by the qualified electors at an election by the municipal authorities, and further provides that at such election commissioners of public works shall be elected to sell and dispose of the bonds and to build and control the waterworks, relates to the construction, purchase, and operation of waterworks and electric light plants, and obviously was intended to carry into effect the provisions of this section. *Seegers v. Gibbs*, 72 S. C. 532, 52 S. E. 586 (1905).

Legislature may confer similar powers on counties.—The right given cities and towns by the Constitution to establish and operate electric light plants, with approval

of their qualified electors, does not affect legislature's power to confer similar right on counties. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

Statute omitting word "purchase" is still sufficient.—A statute enacted to carry out the provisions of this section, though it does not use the word "purchase," is sufficient when considered with this section to warrant the city to purchase waterworks. *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917).

Cited in *Greenwood v. Yoe*, 89 S. C. 24, 71 S. E. 238 (1911); *Hyams v. Carroll*, 146 S. C. 470, 144 S. E. 153 (1928); *Simons v. City Council*, 181 S. C. 353, 187 S. E. 545 (1936).

II. APPLICATION OF SECTION.

Section contemplates corporate utilities as public purposes.—See note to S. C. Const., Art. 8, § 3.

And establishing waterworks is proper corporate purpose.—Under the provisions of this section, the establishment of a system of waterworks and electric light by a city can properly be regarded as a corporate purpose. *McWhirter v. Newberry*, 47 S. C. 418, 25 S. E. 216 (1896).

This section does not limit service to those situated within city limits. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

And it does not authorize involuntary acquisition by condemnation.—*Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916).

But legislature may delegate power to condemn waterworks.—The primary right of a city to condemn a waterworks rests in eminent domain vested in the state not created by the Constitution, but affirmed by S. C. Const., Art. 14, and limited in its exercise by S. C. Const., Art. 1, § 17, and S. C. Const., Art. 9, § 20, the exercise of the right being vested in the legislature which may delegate it to the city. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Vote must be taken before condemnation proceedings started.—This section requires a majority vote in favor of construction or purchase before condemnation proceedings are started, assuming that purchase includes the power to condemn. *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916).

Effect on condemnation power of contract to supply water to nonresidents.—The fundamental right of a city to acquire by condemnation a waterworks plant cannot

be defeated by the suggestion that persons outside of the city now supplied by contract may be hereafter cut off from use of water. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Proposition to install sewerage system may be submitted.—This section is confined to waterworks systems and electric light plants, but there is nothing to indicate that the legislature might not provide that either or both of these two purposes might not be submitted to the voters along with the proposition to install a sewerage system. *Waits v. Ninety-Six*, 154 S. C. 350, 151 S. E. 576 (1930).

City is not obligated to supply nonresidents.—This section cannot be held to mean that cities and towns, by exercising the power of operating waterworks, assume to nonresidents of the city the relation and duties of a public service corporation. *Childs v. Columbia*, 87 S. C. 566, 70 S. E. 296 (1911).

Unless it is bound to them by contract.—A city operating waterworks under this section is bound to a nonresident only by the contract made. *Childs v. Columbia*, 87 S. C. 566, 70 S. E. 296 (1911).

City may agree that private company manage supply system.—Under this section a contract whereby a city builds an additional water supply system to be managed, operated, and maintained by private company is not invalid as involving exercise of power of taxation for purposes essentially private. *Green v. Rock Hill*, 149 S. C. 234, 147 S. E. 346 (1929).

III. ELECTIONS.

This section implies power to hold election.—This section necessarily implies the power of the municipality to hold an election to ascertain the will of the majority, though possibly this may be defeated by the failure of the General Assembly to provide election machinery. *Dick v. Scarborough*, 73 S. C. 150, 53 S. E. 86 (1905).

When construed with other sections of Constitution.—This section, and S. C. Const., Art. 2, § 13, and Art. 8, § 7, indicate procedure for an election on question of purchase of waterworks as well as payment of price. *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917).

And legislature cannot deny right to vote.—The legislature can not so limit the use of the election machinery as to deny to the voter the constitutional right to vote for the purchase of waterworks, and all rights given by the Constitution may be exer-

cised by the voters, whether expressly mentioned in a statute or not. *Dick v. Scarborough*, 73 S. C. 150, 53 S. E. 86 (1905).

Petition for election must be signed by majority of freeholders.—Under S. C. Const., Art. 2, § 13, petition for an election to issue bonds to meet the cost of constructing waterworks and electric light plants must be signed by a majority of the freeholders as shown by the tax books of the city or town. *McWhirter v. Newberry*, 47 S. C. 418, 25 S. E. 216 (1896).

But election hereunder is not dependent upon filing petition.—Act making the ordering by municipality of election on the construction of a waterworks system dependent upon filing petition by a majority of freeholders was held not to construe this section as requiring that such a petition be filed before an election could be held, since this section is not ambiguous and needs no construction and since such act is regarded merely as a condition added to this section. *Acker v. Cooley*, 177 S. C. 144, 181 S. E. 10 (1934).

Ballot is sufficient if voter informed of issue.—In a city election to determine the issue or bonds for purchase of waterworks, any form of ballot in accordance with the previous notice, giving the voter full knowledge of the issue involved, is sufficient. *Dick v. Scarborough*, 73 S. C. 150, 53 S. E. 86 (1905).

Majority of those voting is sufficient.—A vote in favor of construction or purchase by a majority of the qualified voters who voted at the election is sufficient in view of this section. *Harby v. Jennings*, 112 S. C. 479, 101 S. E. 649 (1919).

Under this and other constitutional sections.—Elections under this section and S.

C. Const., Art. 8, § 7 are controlled by S. C. Const., Art. 2, § 13, providing that a majority of those voting at special elections is sufficient to authorize city bonds. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

And absent electors are presumed to assent to will of majority voting.—Qualified electors who have absented themselves from an election duly called are presumed to assent to the express will of the majority of those voting, unless the law providing for the election otherwise declares. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Separate submission of purposes of bonds is not required.—This section, S. C. Const., Art. 8, § 7 and Art. 10, § 5 do not require the separate submission of purposes for which bonds may be issued by municipalities, since manner in which purposes for which municipalities may issue bonds shall be submitted to electorate is one purely of legislative cognizance. *Waits v. Ninety-Six*, 154 S. C. 350, 151 S. E. 576 (1930).

Bonds issued by town, pursuant to election submitting as a general proposition the purpose of establishing and constructing waterworks and sewerage system within corporate limits, were valid and binding obligations, there being no constitutional limitations relative to manner in which questions are to be submitted. *Waits v. Ninety-Six*, 154 S. C. 350, 151 S. E. 576 (1930).

And two issues may be submitted contemporaneously.—Questions of purchase of waterworks and of bond issue for payment thereof may be submitted to elector contemporaneously. *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917).

§ 6. Corporate taxes must be uniform; license taxes.

The corporate authorities of cities and towns in this State shall be vested with power to assess and collect taxes for corporate purposes, said taxes to be uniform in respect to persons and property within the jurisdiction of the body composing the same; and all the property, except such as is exempt by law, within the limits of cities and towns shall be taxed for the payment of debts contracted under authority of law. License or privilege taxes imposed shall be graduated so as to secure a just imposition of such tax upon the classes subject thereto.

- I. General Consideration.
- II. Power to Tax.
- III. Application of Section.

Cross Reference.

As to the provisions for taxes and licenses for businesses and professions in towns and cities over 1,000 inhabitants, see § 47-271.

I. GENERAL CONSIDERATION.

Section is merely direction to General Assembly, and is not a direct grant of power. *Charleston Heights Co. v. City Council*, 138 S. C. 187, 136 S. E. 393 (1926); *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

In *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918), the court held that the language of this section was not such as to give a direct grant of authority to municipal corporations, but that it was a direction to the General Assembly. *Great Atlantic & Pacific Tea Co. v. Spartanburg*, 170 S. C. 262, 170 S. E. 273 (1933).

And it is not applicable to franchises granted by State.—This section is applicable only to licenses imposed by municipal corporations, and not to franchises granted by the State. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 58 S. E. 811 (1907).

Scope of section as construed with S. C. Const., Art. 10, § 5.—By this section and S. C. Const., Art. 10, § 5, it is directed: (1) that the corporate authorities of cities shall be vested with the power to tax for corporate purposes; (2) that such taxes shall be uniform in respect to persons and property; (3) that all property (save that excepted) shall be taxed; (4) that this power to tax to borrow money and to contract debts shall be restricted. The General Assembly is empowered to confer on towns the power to tax and to limit its exercise in these four particulars. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918).

Indebtedness may not exceed eight per cent of value of taxable property.—The bonded indebtedness of an incorporated city or town may not exceed eight per cent of the assessed value of its taxable property, but up to that limit the city may incur bonded indebtedness, so long as the expenditures be for corporate or public purposes. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Applied in *Triplett v. Chester*, 209 S. C. 455, 40 S. E. (2d) 684 (1946).

Cited in *Western Union Tel. Co. v. Winnsboro*, 71 S. C. 231, 50 S. E. 870 (1905); *Martin v. School Dist.*, 57 S. C. 125, 35 S. E. 517 (1900); *State v. Neely*, 30 S. C. 587, 9 S. E. 664 (1889); *Kalber v. Stokes*, 194 S. C. 339, 9 S. E. (2d) 785 (1940).

II. POWER TO TAX.

Legislature has exclusive power of taxation.—The S. C. Constitution of 1895 has not taken from the legislature the exclusive power of taxation. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918).

Which it may delegate to cities and towns.—*Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918).

Although the word "levy" is not used in this section, the authority of the General Assembly to delegate to cities and towns the power to levy taxes has never been

doubted. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Lacking inherent right to tax.—This section does not give towns an inherent right to collect a license tax, such being an exclusive power of the legislature which it may delegate. *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918).

Such delegation is only for corporate purpose.—Under a proper construction of this section, the taxing power of the legislature cannot be delegated except for a corporate purpose. *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14 (1888); *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

Such as recreation center and pool. — A recreation center and a swimming pool are for public or corporate purposes and, therefore, are purposes for which taxes may be levied or indebtedness incurred. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Which purpose must be declared.—An act declaring townships along the line of a railroad bodies corporate, with power to subscribe stock and assess and collect taxes to pay the subscription, but not declaring for what corporate purpose the power is given, is in violation of this section. *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14 (1888).

Object of graduation is to make taxes uniform.—The object of the graduation is to make such taxes as far as possible uniform, a just imposition being the end in view. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 58 S. E. 811 (1907).

In order to tax reasonably and fairly. — An ordinance of the city of Sumter, providing that if the gross annual income from the business of auctioning horses and mules does not exceed \$2,000, the license tax shall be \$300 a day, and \$300 plus two and one-half per cent of the excess if the gross annual income exceeds that amount, was held void under this section and § 47-271, as it fixes an unreasonable sum for the license and does not graduate the license fairly according to gross income nor according to capital invested. *Ex parte Bates*, 127 S. C. 167, 120 S. E. 717 (1923).

Tax must be uniform as to members of class.—A city ordinance requiring persons in certain occupations and professions to pay a license or privilege tax, which is uniform as to the members of each class or occupation on which it operates, is not in violation of this section requiring such taxes to be just because the different classes are not taxed alike. *Hill v. City Council*, 59 S. C. 396, 38 S. E. 11 (1901).

And must be on all property not exempted.—A contract between a city and corporation that the latter shall construct a system of waterworks and an electric light plant, and convey them to the city, and that the city shall operate such plants, and shall among other stipulations yearly collect a certain sum from owners of lots fronting on streets in which water mains are laid, so much a foot for the ground, with a certain addition in case of improvements, violates this section requiring that taxation shall be on assessment of property according to its value and that all the property, except such as is exempt, shall be taxed for payment of debts. *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898).

Exemptions are only of property used for public purposes.—The only exemptions under this section are of property used for municipal, educational, literary, scientific, religious, or charitable purposes. *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

But not property of manufacturing company.—The property of a manufacturing company is not exempt under this section. *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

Only express provisions make taxes lien on property.—Taxes imposed under this section are not a lien on property taxed in absence of statute expressly creating a lien. *Charleston Heights Co. v. City Council*, 138 S. C. 187, 136 S. E. 393 (1926).

And this section does not create lien.—Assuming that this section is a direct grant of power to cities "to assess and collect taxes," it does not carry with it by implication a lien on property taxed. *Charleston Heights Co. v. City Council*, 138 S. C. 187, 136 S. E. 393 (1926).

III. APPLICATION OF SECTION.

Ordinance may classify local and out-of-town bakeries.—A license tax ordinance which required local bakeries to pay \$25.00, and bakeries with established place of business out of the city but selling or delivering their products within the city to pay \$50.00 per year, was held valid, there being nothing to show that imposition of a higher license on nonresidents was unreasonable, capricious or confiscatory. *American Bakeries Co. v. Sumter*, 173 S. C. 94, 174 S. E. 919 (1934).

And also chain stores and individual stores.—Municipality has power to impose license tax upon chain stores different from tax imposed upon individual stores, where license was graduated on gross income and applied uniformly to all of same class. *Great Atlantic & Pacific Tea Co. v. Spartanburg*, 170 S. C. 262, 170 S. E. 273 (1933).

Taxing money lenders except banks is constitutional.—A city ordinance providing that persons, firms, and corporations, except regularly established banks, lending money on personal property security, should pay licenses according to a schedule of their gross business, thus placing such money lenders in a class different from that of banks, was not unconstitutional as discriminatory. *Cowart v. City Council*, 67 S. C. 35, 45 S. E. 122 (1903).

Assessment within specially created assessment district is not a tax within meaning of this section. *Sanders v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

Section is inapplicable to sanitary tax.—This section was held inapplicable in *Marion v. Baxley*, 192 S. C. 112, 5 S. E. (2d) 573 (1939), where an annual town sanitary tax was in question.

Complaint seeking refund of taxes must allege nongraduation.—In a complaint seeking to recover a license tax paid under protest, it will not be presumed that the tax was not graduated in the absence of allegations to that effect. *Florida Cent. & P. R. Co. v. Columbia*, 54 S. C. 266, 32 S. E. 408 (1899).

Ordinance requiring license tax but exempting licensed dealers is unconstitutional.—An ordinance requiring dealers in oils to pay a license of a certain sum per year, and providing that this license shall not apply to dealers handling oils on which the license has been paid, is unconstitutional because there is no reasonable ground for such classification, this section providing for uniformity of taxes. *Standard Oil Co. v. Spartanburg*, 66 S. C. 37, 44 S. E. 377 (1903).

Taxing power of Patrick municipal authorities.—This constitutional provision does not raise an implication of the vesting of a greater power to tax in the municipal authorities of Patrick than has been done by the enactment of § 47-161 of the Code. *Brown v. Patrick*, 202 S. C. 236, 24 S. E. (2d) 365 (1943).

§ 7. Bonded debt; certificates of indebtedness; sinking fund; refunding bonded debt; provisos as to certain cities added by amendment.

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No city or town in this State shall hereafter incur any bonded debt which, including existing bonded indebtedness, shall exceed eight per centum of the assessed value of the taxable property therein, and no such debt shall be created without submitting the question as to the creation thereof to the qualified electors of such city or town, as provided in this Constitution for such special elections; and unless a majority of such electors voting on the question shall be in favor of creating such further bonded debt, none shall be created: *Provided*, That this Section shall not be construed to prevent the issuing of certificates of indebtedness in anticipation of the collection of taxes for amounts actually contained or to be contained in the taxes for the year when such certificates are issued and payable out of such taxes: *And provided, further*, That such cities and towns shall on the issuing of such bonds create a sinking fund for the redemption thereof at maturity. Nothing herein contained shall prevent the issuing of bonds to an amount sufficient to refund bonded indebtedness existing at the time of the adoption of this Constitution: *Provided*, That the limitation imposed by this Section and by Section 5, Article IV, of this Constitution shall not apply to bonded indebtedness incurred by the Cities of Columbia, Rock Hill, Charleston and Florence, where the proceeds of said bonds are applied solely for the purchase, establishment, maintenance or increase of water works plants, sewerage system; and by the City of Georgetown, when the proceeds of said bonds are applied solely for the purchase, establishment, maintenance or increase of water works plant, or sewerage system, gas and electric light plants where the entire revenue arising from the operation of such plants or systems shall be devoted solely and exclusively to the maintenance and operation of the same, and where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness: *Provided, further*, That the limitations imposed by this Section and by Section 5, Article X, of this Constitution, shall not apply to bonded indebtedness incurred by the City of Greenville, but said City of Greenville may increase its bonded indebtedness in the manner provided in said Section of said Article, to an amount not exceeding fifteen per cent of the value of the taxable property therein, where the proceeds of said bonds are applied solely to the payment of past indebtedness, to expenses and liabilities incurred, or to be incurred in the improvements of streets and sidewalks, and for providing sewerage for said city, or any part thereof, for purchasing, establishing, owning or operating water works or electric light plants: *Provided, further*, That the limitations imposed by this Section, and by Section 5, of Article X, of this Constitution, shall not apply to the bonded indebtedness incurred by the City of Bennettsville, where the proceeds of said bonds are applied solely and exclusively for the purchase, establishment and maintenance of a water works plant or sewerage system, and where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution upon the question of other bonded indebtedness. *Pro-*

vided, further, That the limitations imposed by this Section and by Section 5, of Article X, of this Constitution, shall not apply to bonded indebtedness incurred by the Town of Gaffney, in the County of Cherokee, when the proceeds of said bonds are applied solely and exclusively for the building, erecting, establishing and maintenance of waterworks, electric light plants, or sewerage system, and where the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided in the Constitution upon the question of bonded indebtedness: *Provided,* That the limitation imposed by this Section and by Section 5, of Article X, of this Constitution, shall not apply to bonded indebtedness incurred by the Town of Darlington, where the proceeds of said bonds are applied solely for the purpose of drainage of said town and street improvements, and where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness: *Provided, further,* That the limitations imposed by this Section, and by Section 5, of Article X, of this Constitution, shall not apply to the bonded indebtedness incurred by the towns of Aiken, in the County of Aiken; Camden, in the County of Kershaw; Cheraw, in the County of Chesterfield; Clinton, in the County of Laurens; Edgefield, in the County of Edgefield; and St. Matthews, in the County of Calhoun, when the proceeds of said bonds are applied solely and exclusively for the building, erecting, establishing and maintenance of waterworks, electric light plants, sewerage system or streets, and where the question of incurring such indebtedness is submitted to the qualified electors of said municipality, as provided in the Constitution upon the question of bonded indebtedness: *Provided, further,* That the limitations imposed by this Section, and by Section 5, of Article X, of this Constitution, shall not apply to the bonded indebtedness in and by any municipal corporation when the proceeds of said bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness: *Provided, further,* That the limitations imposed by this Section, and by Section 5, Article X, of this Constitution, shall not apply to bonded indebtedness incurred by the Town of St. Matthews, but said Town of St. Matthews may increase its bonded indebtedness in the manner provided in said Section of said article to an amount not exceeding fifteen per cent of the value of the taxable property therein, where the proceeds of said bonds to the amount of twenty thousand (\$20,000) dollars shall be turned over by the Town Council of said Town of St. Matthews to the duly appointed commissioners of the County of Calhoun for the purpose of aiding in the construction of public buildings for the County of Calhoun.

1900 (23) 570; 1901 (23) 616; 1904 (24) 676; 1905 (24) 955; 1906 (25) 365; 1907 (25) 488; 1908 (25) 1460; 1909 (26) 36; 1910 (26) 1046; 1911 (27) 9; 1910 (26) 1054; 1911 (27) 12; 1910 (26) 1055; 1911 (27) 13; 1910 (26) 1058; 1911 (27) 15.

Provided, further, That the limitations imposed by this section and Section 5, of Article X, of the Constitution, shall not apply to the bonded indebtedness incurred by the Cities of Chester and Sumter, but the said Cities of Chester and Sumter may increase each its bonded indebtedness to an amount not exceeding fifteen per cent. of the assessed value of the taxable property therein where said bonds are issued for the sole purpose of paying the expenses or liabilities incurred or to be incurred in the improvements of streets and sidewalks where the abutting property owners are being assessed for two-thirds or one-half of the cost thereof.

1914 (28) 955; 1915 (29) 60.

Provided, further, That the limitations imposed by this Section and by Section 5, of Article X, of this Constitution shall not apply to the bonded indebtedness incurred by the school district of Yorkville, in the County of York, when the proceeds of said bond are applied exclusively to erecting or making additions to school buildings in the said district, and where the question of incurring such indebtedness is submitted to the qualified electors of said district, as provided in the Constitution, upon the question of bonded indebtedness.

1914 (28) 949; 1915 (29) 107.

That the limitations imposed by this Section and Section 5, Article X, of the Constitution, shall not apply to the bonded indebtedness incurred by the City of Florence, in the County of Florence, when the proceeds of said bonds are applied exclusively for the building, erecting, establishing, and maintaining of streets, waterworks, lighting plants, sewerage system or for the payment of debts already incurred, exclusively for any of said purposes; and when the question of incurring such indebtedness is submitted to the qualified electors of said municipality, as provided in the Constitution upon the question of bonded indebtedness.

1914 (28) 954; 1915 (29) 87.

Provided, further, That the limitations imposed by this Section and by Section 5, of Article X, of the Constitution, shall not apply to the bonded indebtedness incurred by the City of Anderson, but, in addition to the powers now possessed, said City of Anderson may increase its bonded indebtedness in the manner provided in said Section 7 of Article VIII, to an amount not exceeding fifteen per cent of the value of the taxable property therein, where the proceeds of said bonds are applied to the payment of past indebtedness, to the expenses and liabilities incurred or to be incurred in the improvements of streets, sidewalks or other public places, or the purchase, establishment, maintenance, operation or increase of a city market or a public park or parks, or any corporate purpose. But nothing herein contained shall be construed to limit the operation of the amendment to Section 7, of Article XIII, of the Constitution, approved February third, 1911, which said amendment reads as follows:

“Provided, further, That the limitations imposed by the Section and by Section 5, of Article X, of this Constitution shall not apply to the bonded in-

debtedness in and by any municipal corporation, when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness," and said amendment shall remain in full force and effect.

1916 (29) 1235; 1917 (30) 224.

Provided, further, That the limitations imposed by this Section and Section 5, of Article X, of the Constitution, shall not apply to the bonded indebtedness incurred by the City of Abbeville, but, in addition to the powers now placed, said City of Abbeville may increase its bonded indebtedness in the manner provided in Section 7, of Article VIII, to an amount not exceeding fifteen (15) per centum of the value of the taxable property therein, where the proceeds of said bonds are applied to the payment of expenses and liabilities incurred or to be incurred in the improvements of streets and sidewalks; but nothing herein contained shall be construed to limit the operation of the amendment to Section 7, of Article VIII, of the Constitution, approved February 3, 1911.

1917 (30) 662; 1919 (31) 28.

Provided, further, That the limitations imposed by this Section, and by Section 5, of Article X, of the Constitution, shall not apply to the bonded indebtedness incurred by the Cities of Rock Hill, in the County of York, and Florence, in the County of Florence, when the proceeds of any bonds issued by said cities are applied exclusively to the purchase, erection, improvement and maintenance of streets, sidewalks, waterworks, lighting plants, gas plants, sewerage system, or for the payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of the said municipalities as provided by law.

1918 (30) 1140; 1919 (31) 74.

Provided, further, That the limitations imposed by this section, and by Section 5 of Article X, of this Constitution, shall not apply to the bonded indebtedness incurred by the town of McCormick, but that said town of McCormick may increase its bonded indebtedness in the manner provided in said section of said article to an amount exceeding fifteen per centum of the value of the taxable property therein where the proceeds of the said bonds, which are to be in the amount of thirty thousand (\$30,000) dollars, shall be turned over by the Town Council of the said town of McCormick to the duly elected Commissioners of the County of McCormick for the purpose of aiding in the construction of the public buildings of the said county of McCormick.

1918 (30) 1138; 1919 (31) 58. (See 1920 (31) 803 for meaning of ratifying joint resolution of 1919.)

Provided, that the limitations imposed by this Section, and Section 5, of Article X, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the City of Orangeburg when the proceeds of

such bonds are applied exclusively for the building, erecting, purchasing, developing, improving, establishing, repairing, extending or maintaining of sidewalks, streets, waterworks, lighting plants, sewerage system, fire department or city hall and guardhouse for such city, parks, playgrounds, airports, real estate and municipal buildings, or for any or either of such puposes, and when the question of incurring such bonded indebtedness is submitted to the qualified electors of such municipality by the City Council of said city and a majority of those voting in such election or elections shall vote in favor thereof.

1918 (30) 1135; 1919 (31) 124; 1942 (42) 2465; 1944 (43) 2321.

Provided, further, That the limitations imposed by this Section, and by Section 5, of Article X of the Constitution, shall not apply to the bonded indebtedness incurred by the City of Abbeville, but in addition to the powers now possessed said City of Abbeville may increase its bonded indebtedness in the manner provided in said Section 7, of Article VIII, to an amount not exceeding 15 per cent of the value of the taxable property therein where the proceeds of said bonds are applied to the payment of expenses and liabilities incurred or to be incurred in the improvement of streets and sidewalks. But nothing herein contained shall be construed to limit the operation of the amendment to Section 7, of Article VIII of the Constitution, approved February 3, 1911, which said amendment reads as follows: *Provided, further,* That the limitations imposed by this Section and by Section 5, of Article X, of this Constitution shall not apply to the bonded indebtedness in and by any municipal corporation when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness.

1917 (30) 662; 1919 (31) 229; 1920 (31) 761.

Provided, further, That the limitations imposed by this Section, and by Section 5, of Article X, of this Constitution shall not apply to the bonded indebtedness incurred by the City of Charleston where the proceeds of said bonds are applied solely for the acquisition, purchase, establishment, improvement, maintenance or operation of lands, water or riparian rights, wharves, docks, warehouses, buildings, rights of way, or any other property for the development of the port and terminal utilities of the port of Charleston, where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of the city of Charleston as provided in the Constitution, upon the question of other bonded indebtedness.

1920 (31) 1714; 1921 (32) 21.

Provided, further, That the limitations imposed by this Section and by Section 5, of Article X, of the Constitution, shall not apply to the bonded indebtedness incurred by the City of Laurens, in addition to the powers possessed, said City of Laurens may increase its bonded indebtedness in the manner provided in Section 7, of Article VIII, where the proceeds of said bond are applied

to the payment of expenses and liabilities incurred, or to be incurred, in the improvement of streets and sidewalks. But nothing herein contained shall be construed to limit the operation of the amendment of Section 7, of Article VIII, of the Constitution, approved February 3, 1911, which amendment reads as follows:

Provided, further, That the limitations imposed by this Section and by Section 5, of Article X, of this Constitution shall not apply to the bonded indebtedness in and by any municipal corporation when the proceeds of the bond are applied solely and exclusively for the purchase, establishment and maintenance of the waterworks plant or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality as provided in the Constitution upon the question of other bonded indebtedness, said amendment shall remain in full force and effect.

1920 (31) 1710; 1921 (32) 29.

Provided, That the limitations imposed in Section 7, of Article VIII, and Section 5, of Article X, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the Town of Hartsville, when the proceeds of any bonds issued by said town are applied exclusively to the purchase, erection, improvement and maintenance of streets and sidewalks, where the abutting property owners are assessed for as much as two-thirds the cost thereof, or for waterworks, lighting plants, gas plants, sewerage system, or for the payment of debt incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of the said municipality by law.

1920 (31) 1719; 1921 (32) 30.

Provided, That the limitations imposed in Section 7, of Article VIII, and of Section 5, of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the Town of Chesterfield when the proceeds of any bonds issued by said town are applied exclusively to the purchase, erection, improvement and maintenance of streets and sidewalks, where the abutting property owners are assessed for as much as one-half the cost thereof, or for waterworks, lighting plants, gas plants, sewerage systems, or for the payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of the said municipality as provided by law.

1920 (31) 1718; 1921 (32) 32.

Provided, That the limitations imposed by this Section and Section 5, of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the Town of Marion, when the proceeds of such bonds are applied exclusively for the building, erecting, establishing and repairing, extending or maintaining of sidewalks, streets, waterworks, lighting plants, sewerage system, fire department or town hall and guard-house for such town, or for either of such purposes or for the payment of any indebtedness already incurred for any or either of such purposes; and when

the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the town council of said town, and a majority of those voting in such election or elections shall vote in favor thereof.

1920 (31) 1702; 1921 (32) 41.

Provided, further, That the limitations imposed by this Section, and by Section 5, Article X of the Constitution, shall not apply to the bonded indebtedness incurred by the Town of Bishopville, but that the said Town of Bishopville may increase its bonded indebtedness in the manner provided in said Section of said Article to an amount not exceeding 15 per cent of the assessed value of the taxable property therein, where the proceeds derived from said bonds are applied for the improvement of the streets and sidewalks in the said Town of Bishopville: *Provided,* the question of increasing such bonded indebtedness is submitted or has been submitted to the qualified electors of said municipality by the Town Council of said Town of Bishopville, a majority of those voting in such election shall vote in favor thereof.

1920 (31) 1716; 1921 (32) 42.

Provided, further, That the limitations imposed by this Section, and by Section 5 of Article X of the Constitution, shall not apply to the bonded indebtedness incurred by the Town of Newberry; but in addition to the powers now possessed said Town of Newberry may increase its bonded indebtedness in the manner provided in said Section 7, of Article VIII, to an amount not exceeding twenty per cent of the value of the taxable property therein, where the proceeds of said bonds are applied to the expenses and liabilities incurred, or to be incurred, in the improvement of streets, sidewalks or other public places, or the purchase, establishment, maintenance, operating or increase of a city market or a public park or parks, or other corporate purposes. But nothing contained herein shall be construed to limit the operation of the amendment of Section 7, of Article VIII, of the Constitution, approved February 3, 1911, which said amendment reads as follows: "*Provided, further,* That the limitations imposed by this Section and by Section 5, of Article X of this Constitution, shall not apply to the bonded indebtedness in and by any municipal corporation when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality as provided in the Constitution upon the question of other bonded indebtedness," and said amendment shall remain in full force and effect.

1920 (31) 1715; 1921 (32) 50.

Provided, further, That the limitations imposed by this Section and Section 5, of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the Towns of Saluda, in Saluda County, and Kingstree, Williamsburg County, when the proceeds of such bonds are applied exclusively to the building, erecting, establishing, repairing, extending or maintaining of sidewalks, streets, waterworks, lighting plants, sewerage

system, fire department or town hall and guardhouse for such town, or for any or either of such purposes, or for the payment of any indebtedness already incurred for any or either of such purposes, and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipalities by the Town Council of said towns, a majority of those voting in said election or elections shall vote in favor thereof.

1920 (31) 1703; 1921 (32) 68.

Provided, further, That the limitations imposed by this Section and by Section 5, Article X of the Constitution, shall not apply to the bonded indebtedness incurred by the City of Charleston, nor to the issuing of certificates of indebtedness by said city, where the proceeds of said bonds or certificates of indebtedness are applied solely and exclusively to the payment of permanent improvements on streets, the intersection of streets and sidewalks and for curbing of streets and for drains, where the City Council of said city shall levy an assessment upon abutting property, as provided in and by the amendment to Section 14-A, Article X of said Constitution, ratified February 15, 1919, and where the entire revenue arising from the assessments so levied by the City Council of said city shall be devoted solely and exclusively to the payment of said bonds or certificates of indebtedness and where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of said city, as provided in the Constitution upon other bonded indebtedness.

1920 (31) 1704; 1921 (32) 69.

Provided, That the limitations imposed in Section 7, Article VIII, and Section 5, Article X, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the City of Chester, when the proceeds of any bonds issued by said city are applied exclusively to the purchase, erection, improvements and maintenance of streets and sidewalks, where the abutting property owners are assessed for as much as one-half of the cost thereof, or for waterworks, lighting plants, gas plants, sewerage system, or for the payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1920 (31) 1720; 1921 (32) 107.

Provided, further, That the limitations and restrictions imposed by this Section and by Section 13 of Article II, and Section 5 of Article X of the Constitution, shall not apply to bonds issued or to be issued by the City of Union for the purpose of funding or paying any indebtedness incurred before February 15, 1920, for municipal purposes, and all such indebtedness incurred before said date is hereby validated, and the General Assembly shall have power by special Act to authorize said city to issue bonds to fund the same without regard to limitations and restrictions.

1920 (31) 1709; 1921 (32) 92.

Provided, further, That the limitations imposed by Section 7, Article VIII, and Section 5, Article X of the Constitution, shall not apply to the bonded in-

debtedness incurred by the Townships of Cross Keys, Santuc, Pickney, Goshen Hill, Union, Boganville, Jonesville and Fish Dam, in Union County; and that the aforesaid townships may increase their bonded indebtedness in the manner provided in said Section of said Article to an amount not exceeding thirty-five (35) per cent of the assessed value of the taxable property therein for improvements of the highways and bridges in the said townships of Union County: *Provided*, The question of increasing such bonded indebtedness is submitted, or has been submitted to the qualified electors of said townships, and a majority of those voting in such election or elections, shall vote in favor thereof.

1920 (31) 1711; 1921 (32) 97.

Provided, That the limitations imposed in Section 7, of Article VIII, and in Sections 5 and 6, of Article X, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the County of Richland, when the proceeds of any bonds issued by said county are applied exclusively to the purpose of erection, improvement and maintenance of a public hospital and court house or in payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of said county, as provided by law.

1920 (31) 1721; 1921 (32) 156.

Provided, That the provisions of Article VIII, Section 7, and Article X, Section 5, shall not apply to the bonded indebtedness incurred by the Town of Allendale, in Allendale County, when the proceeds of said bonds are applied, or are to be applied for the building, erecting, establishment and maintenance of waterworks, electric light plants, sewerage system or streets; or where the proceeds of said bonds are to be applied to the building and construction of a court house and jail in the said town.

1920 (31) 1722; 1921 (32) 169.

Provided, further, That the limitations imposed by this Section and by Section 5, of Article X of this Constitution, shall not apply to the bonded indebtedness incurred by the City of Charleston where the proceeds of said bonds are applied solely for the acquisition, purchase, establishment, improvement, maintenance or operation of lands, water or riparian rights, wharves, docks, warehouses, buildings, rights of way, or any other property for the development of the port and terminal utilities of the port of Charleston where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of the City of Charleston as provided in the Constitution upon the question of other bonded indebtedness.

1920 (31) 1705; 1921 (32) 352.

Provided, That the limitations imposed by this Section and Section 5, of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the Town of Bennettsville, when the proceeds of such bonds are applied exclusively for the building, erecting, establishing, repairing, extending or maintaining of sidewalks, streets, waterworks, lighting plants, sewerage system, fire department, or town hall and guardhouse for

such town, or for either of such purposes or for the payment of any indebtedness already incurred for any or either of such purposes; and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the town council of said town, and a majority of those voting in such elections shall vote in favor thereof.

1920 (31) 1713, 1717; 1921 (32) 96. See 1922 (32) 821.

Provided, further, That the limitations imposed by this Section and by Section Five (5) of Article Ten (10) of the Constitution shall not apply to bonded or other indebtedness of the Town of Bennettsville incurred for street or sidewalk improvements in cases where the corporate authorities of said town shall have levied or shall have determined to levy, special assessments on abutting property for the purpose of paying for the improvement (whether including or not including improvements at street intersections) and such indebtedness of the Town of Bennettsville shall not be considered in determining the amount of indebtedness permitted to be incurred by said town for other purposes, or by any other political or civil division or subdivision of the State for any purpose.

1920 (31) 1713, 1717; 1922 (32) 916. See 1921 (32) 96; 1922 (32) 821.

Provided, That the limitations imposed in Section 7, Article VIII, and by Section 5, of Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the City of Beaufort, when the proceeds of any bonds issued by said city are applied exclusively to the purchase, erection, improvements and maintenance of streets and sidewalks where the abutting property owners are assessed as much as one-half the cost thereof, or for the purchase, construction and maintenance of waterworks, lighting plants, gas plants, sewerage system or for the payment of debts incurred and when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1922 (32) 1329; 1923 (33) 1.

Provided, That the limitations imposed in Section 7, Article VIII, and by Section 5, Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the City of Spartanburg when the proceeds of any bonds issued by said City are applied exclusively to the purchase, erection, improvements and maintenance of streets and sidewalks, or for the purchase, construction and maintenance of waterworks, lighting plants, gas plants, sewerage systems, or for the payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of the said municipality as provided by law: *Provided,* That the amount of bonds issued hereunder shall not exceed fifteen per cent. of the assessed valuation of property, in the City of Spartanburg.

1922 (32) 1568; 1923 (33) 128.

Provided, That all limitations imposed by Section seven of Article eight and Section five of Article ten of the Constitution of the State of South Carolina shall not apply to bonded indebtedness incurred by the City of Union

when the proceeds of said bonds issued by said city are applied exclusively to pay past indebtedness.

1926 (34) 1373; 1927 (35) 207.

Provided, That the limitations imposed by Article VIII, Section 7, and Article X, Section 5, of the Constitution shall not apply to the bonded indebtedness incurred by the City of Charleston where the proceeds of said bonds are applied solely to the replacement of funds heretofore used for purposes other than those for which the taxes represented thereby were levied and collected, or to the funding or payment of any indebtedness incurred before March 15, 1926, for municipal purposes, or to the laying, extension, repair and maintenance of drains, or to the costs of street improvement; and the General Assembly shall have power by special Act or Acts to authorize said city to issue bonds for all or any of the purposes aforesaid, without regard to limitations or restrictions and for the issuance of such bonds it shall not be necessary, unless the Act authorizing such issue shall require it, to submit the question of the creation of such debt to the freeholders and qualified electors of said city and for a prerequisite for holding such election no petition from the freeholders of said city shall be necessary, any provisions in Section 13 of Article II of the Constitution to the contrary notwithstanding.

1926 (34) 1376; 1927 (35) 33.

Providing, That the limitation imposed by Section 7, Article VIII, and Section 5 of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the Town of Conway, Horry County, when the proceeds of such bonds are applied exclusively for the building, erecting, establishing, repairing, extending or maintaining sidewalks, streets, street lighting, waterworks, lighting plants, storm sewers, drainage, sewerage system, fire departments, or public buildings for such town, or for any or either of such purposes, or for the payment of any indebtedness already incurred for any or either of such purposes; when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the Town Council of said Town, and a majority of those voting in such election or elections shall vote in favor thereof.

1926 (34) 1367; 1927 (35) 46.

Provided, That the limitations imposed under Section 7 of Article VIII and Section 5 of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the Town of Lancaster when the proceeds of any bonds issued by the said town are applied exclusively to the purchase, construction and maintenance of waterworks, construction and extension of the sewerage system, and for the purchase, construction and maintenance of streets and sidewalks where the abutting property owners are assessed as much as one-half the cost thereof, or for the payment of past indebtedness, and when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1926 (34) 1378; 1927 (35) 59.

Provided, further, That the limitations imposed by this Section of the Constitution shall not apply to bonded or other indebtedness of the Town of McColl incurred for street or sidewalk improvements, in cases where corporate authorities of said town shall have levied or shall have determined to levy special assessments on abutting property for the purpose of paying for the improvements (whether or not including improvements at street intersections); and such indebtedness of the Town of McColl shall not be considered in determining the amount of indebtedness permitted to be incurred by said town for other purposes, or by any other political or civil division or subdivision of the State for any purpose, and shall not exceed fifteen (15) mills of the assessed valuation of the property in said town.

1926 (34) 1371; 1927 (35) 65.

That the limitations imposed by Section 7, Article VIII, and Section 5, Article X, of the Constitution of the State of South Carolina, shall not apply to the Town of Dillon, when the proceeds of such bonds are applied exclusively for the building, establishing, erecting, repairing, extending, improving, paving or maintaining of sidewalks, streets, fire department, city or town hall and guardhouse for such town, or for any or either of such purposes, or for payment of any indebtedness already incurred for any or either of such purposes; and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the Town Council of said town, and a majority of those voting in such election or elections shall vote in favor thereof.

1926 (34) 1369; 1927 (35) 111.

Provided, That the limitations imposed by this Section of the Constitution shall not apply to bonded or other indebtedness of the Town of Clio, said town being hereby expressly authorized to vote bonds to an amount not exceeding sixteen (16) per cent of the value of all taxable property within the corporate limits of said town as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said town as provided in the Constitution upon the question of bonded indebtedness.

1926 (34) 1372; 1927 (35) 184.

Provided, That the limitations imposed in Section 7, Article 8, and Section 5, Article 10, of the Constitution of the State of South Carolina, shall not apply to the Town of Mullins, in the County of Marion to the extent herein provided when the proceeds of any bond or other obligation issued by said town are applied to past indebtedness, street paving and other improvements of said streets; but the Town of Mullins is hereby authorized to issue bonds or other obligations for past indebtedness, street paving and other improvements of streets to an amount not exceeding seventy thousand (\$70,000.00) dollars in addition to the limitations now imposed by the Constitution.

1926 (34) 1374; 1927 (35) 303.

Section 1. That the limitations imposed under Section 7, Article VIII, and Section 5, Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the Town of Kershaw, in the Counties of Lancaster and Kershaw, when the proceeds of any bonds issued by the said town are applied exclusively to the purchase, construction and maintenance of waterworks, sewerage system, and for the purchase, construction and maintenance of streets and sidewalks where the abutting property owners are assessed as much as one-half the cost thereof.

1928 (35) 1699; 1929 (36) 148.

Section 1. That the limitations imposed under Section 7 of Article 8, and Section 5 of Article 10, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the Town of Heath Springs, in the County of Lancaster, when the proceeds of any bonds issued by the said Town are applied exclusively to the purchase, construction and maintenance of waterworks, purchase, construction and maintenance of a sewerage system, and for the purchase, construction and maintenance of streets and sidewalks where abutting property is assessed as much as one-half the cost thereof, or for the payment of past indebtedness, when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1928 (35) 1690; 1929 (36) 149.

Provided, further, That the limitations imposed by this Section and by Section 5 of Article X, of the Constitution, and by any amendments thereof, shall not apply to the bonded indebtedness incurred by the City of Anderson, but, in addition to the powers now possessed, said City of Anderson may increase its bonded indebtedness in the manner provided in said Section 7 of Article VIII, to an amount not exceeding thirty (30%) per cent. of the value of the taxable property therein, where the proceeds of said bonds are applied to the payment of any indebtedness incurred by said city before January 1, 1929, or to expenses and liabilities incurred or to be incurred in the improvements of streets, sidewalks or other public places, or to the purchase, establishment, maintenance, operation or increase of a city cemetery or city market or public parks: *Provided, however,* That nothing herein contained shall be construed to limit the operation of the amendment to Section 7 of Article VIII, of the Constitution approved February 3, 1911, by which the limitations imposed by said Section 7 of Article VIII, and by said Section 5 of Article X, of the Constitution were removed from any municipal corporation when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution upon the question of other bonded indebtedness, and said amendment of February 3, 1911, shall remain of full force and effect and said City of Anderson shall have the full benefit thereof.

1928 (35) 1702; 1929 (36) 260.

Provided, That the limitations imposed by Article VIII, Section 7 and Article X, Section 5, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred or to be incurred by the City of Walterboro where the proceeds of such bonds are applied exclusively to the payment of expenses and liabilities incurred or to be incurred for the purchasing, repairing, enlarging, or improving of City or Town Hall, or public park, or parks, and grounds therefor; public market and guardhouse; purchasing, enlarging, extending, improving and establishing electric light and power plants, waterworks or sewage systems; erecting, repairing, enlarging, improving, or altering school buildings, fire department and fire protection purposes; improvement of streets and sidewalks and drainage therefor, or other corporate purposes for the said City of Walterboro, or for any or either of such purposes. And when the question of incurring such bonded indebtedness is submitted to the qualified electors of the City of Walterboro by the City Council of the said City of Walterboro, and the majority of those voting in such election, or elections, shall vote in favor thereof; and the said City of Walterboro shall have power to issue bonds for any or all of the purposes aforesaid in the manner above provided, without regard to limitations or restrictions; and no petition from the freeholders of the said City shall be necessary as a prerequisite for holding such election, or elections, any provisions in Section 13, of Article II, of the Constitution to the contrary notwithstanding.

1928 (35) 1688; 1929 (36) 280.

Provided, further, That the limitations imposed by this Section and by Section 5 of Article X of the Constitution shall not apply to any bonded indebtedness incurred by the City of Columbia, where the bonded indebtedness is authorized to be incurred for the purpose of enlarging and maintaining its fire department or for purchase, building and maintenance of fire stations, fire alarm systems or fire equipment, or for any one or more of said purposes, and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said City at an election or elections to be called by the City Council of said City, and a majority of those voting thereon shall vote in favor thereof; and the General Assembly need not prescribe as a condition precedent to the holding of any such election a petition from the freeholders as provided in Section 13 of Article II of the Constitution.

1930 (36) 1207; 1931 (37) 110.

Provided, further, That the limitations imposed by this Section and by Section 5, Article X, of the Constitution, and by any amendments thereof, shall not apply to the bonded indebtedness incurred by the City of Anderson, but, in addition to the powers now possessed, said City of Anderson may increase its bonded indebtedness in the manner provided in said Section 7, of Article VIII, to an amount not exceeding thirty per cent. of the value of the taxable property therein, where the proceeds of said bonds are applied to the payment of any indebtedness of said City heretofore or hereafter incurred or to be incurred by said City, or to expenses and liabilities incurred or to be incurred in the improvements of streets, sidewalks or other public

places, or to the purchase, establishment, maintenance, operation or increase of a city cemetery or city market or public parks, or to expenses, indebtedness or liabilities heretofore or hereafter incurred or to be incurred by said City in the purchase, establishment, maintenance or operation of an airport or airports located or to be located in Anderson County, South Carolina, or to any other municipal purpose: *Provided, however,* That nothing herein contained shall be construed to limit the operation of the amendment to Section 7 of Article VIII of the Constitution, approved February 3, 1911, by which the limitations imposed by said Section 7 of Article VIII, and by said Section 5 of Article X of the Constitution were removed from any municipal corporation when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant and when the question of incurring such indebtedness is submitted to the freeholder and qualified voters of such municipality, as provided in the Constitution upon the question of other bonded indebtedness, and said amendment of February 3, 1911, shall remain of full force and effect and said City of Anderson shall have the full benefit thereof.

1930 (36) 1279; 1931 (37) 157.

Provided, That the limitations imposed by this Section and by Section 5 of Article X of the Constitution shall not apply to the bonded indebtedness of the City of Georgetown for the purpose of retiring certain outstanding past indebtedness as evidenced by certain bonds and promissory notes of the City of Georgetown, as of December 31st, 1931, as shown by the audit of E. T. Campbell, Certified Public Accountant, of the City of Georgetown, or the retiring of other promissory notes outstanding having been issued in payment of, or to renew the aforesaid promissory notes: *Provided, However,* That the total bonded indebtedness of the said City of Georgetown shall not exceed at any time, excluding bonds issued for waterworks, sewerage, electric light distribution system and street paving and tax anticipated notes, pledging the unincumbered taxes of the said City of Georgetown for the current fiscal year, fifteen (15%) per centum of the assessed value of the taxable property in the said City of Georgetown.

1932 (37) 1400; 1933 (38) 585.

Provided, That the limitations imposed by Section 7, Article 8 and Section 5 of Article 10 of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness of the town of St. George when the proceeds of such bonds are applied exclusively for the building, erecting, establishing, repairing, extending or maintaining of sidewalks, streets, water-works, lighting plants, sewerage system, fire department, or town hall and guard house for such town, or for either of such purposes or for the payment of any indebtedness already incurred for any or either of such purposes, and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the town council of said town and a majority of those voting in such elections shall vote in favor thereof.

1930 (36) 1212; 1933 (38) 589.

Provided, further, That the limitations and restrictions imposed by this Section and by Section 13 of Article II, and Section 5 of Article X of the Constitution, shall not apply to bonds issued or to be issued by the Town of Walterboro and the Town of Manning, for the purpose of funding or paying any indebtedness incurred before the ratification of this amendment by the General Assembly, for municipal purposes, and the General Assembly shall have power by special Act or Acts, to authorize said towns to issue their respective bonds to fund the same without regard to limitations and without the requirement of an election.

1931 (37) 281; 1933 (38) 588.

Provided, That the limitations imposed by this Section and Section 5, Article X of the Constitution, shall not apply to the City of Greenwood when the proceeds of bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant or sewer system or lighting plant, and, in addition to bonds issued for those purposes, the City of Greenwood may issue assessed bonds to an amount not exceeding twenty per cent (20%) of the value of the taxable property therein where the bonded indebtedness is incurred for the cost of improving traffic conditions in said city by the relocation of all or part of the railroad tracks in said city, the said city being specifically authorized to provide new rights-of-way for the railroads whose tracks may be relocated, such new rights-of-way to be located both in the City of Greenwood and near the City of Greenwood, as well as for all costs or damages incident thereto and also for the cost of acquiring for street, parking, parkway, or traffic purposes the present rights-of-way of the said railroads whose tracks are relocated and also for any costs or expenses connected with or a part of the relocation of tracks, elimination of grade crossings and acquiring for street, parking, parkway or traffic purposes any property or rights-of-way now owned by railroads whose tracks are relocated as well as any reversionary interest therein when the question of increasing such bonded indebtedness is submitted to the qualified electors of said city at an election or elections to be called by the city council of said City, and a majority of those voting thereon shall vote in favor thereof.

1940 (41) 1756; 1941 (42) 271.

- I. General Consideration.
- II. Borrowing in Anticipation of Taxes.
- III. Sinking Fund.
- IV. Preliminary Incidents to Issuing Bonds.
- V. Application of Section.

Cross References.

As to provisions for taxing to pay township bonds issued in aid of railroads, see § 58-862. As to provisions for increasing bonded indebtedness of municipal corporations, see S. C. Const., Art. 10, § 5. As to provisions for issuing bonds to refund or pay in part or whole the bonded indebtedness of a municipality, see §§ 1-681 to 1-699. As to power of any municipality to issue

bonds within constitutional debt limitations for a corporate purpose, see §§ 47-831 to 47-860.

I. GENERAL CONSIDERATION.

Intention of section.—In the dissenting opinion of *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916), it is said that the intention of this section and S. C. Const., Art 8, § 5, is that the result in each instance shall be determined by a majority of the qualified electors voting upon the respective questions, and there is no good reason why both questions cannot be submitted to the qualified electors, provided the questions are so submitted that

the electors shall be able to vote on each question.

Meaning of this and other sections.—It seems that the following conclusions are deducible from this section and other constitutional provisions on assessment and taxation: (1) that all the property in the State is liable to be taxed except such as is specially exempted by the S. C. Constitution and except such as could not be taxed without a violation of the provisions of the Constitution of the United States; (2) that all taxes, whether State or county or municipal, must be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment previously made for that purpose; (3) that such assessment must be uniform, whether made for the purpose of State, county, or municipal taxation; (4) that the corporate authorities of a town may be vested with power to assess and collect taxes for corporate purposes, but in doing so "the General Assembly shall require that all the property, except that heretofore exempted, within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law;" (5) that while there is no express provision authorizing the General Assembly to invest the municipal authorities of a town with power to borrow money and issue bonds to secure the same, yet this is necessarily implied by the provisions of this section; (6) that this power to borrow money and issue bonds is limited by this section providing that the bonded debt of any municipal corporation "shall never exceed eight per centum of the assessed value of all the taxable property therein." *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846 (1897).

This section and other constitutional provisions on taxation practically show (1) that taxation of persons and property must be uniform, and based upon an assessment of property already made; (2) that taxes must be laid upon all the property within the territory of municipal corporations according to its value; (3) that taxes can only be levied by municipal corporations for public or corporate purposes; (4) that methods for increasing the public debt of municipal corporations are prescribed. *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898).

"Past indebtedness" means up to time of filing petition for election.—The words "past indebtedness" within this section as amended, authorizing the city of Anderson to increase its bonded indebtedness to an amount not exceeding 15 per cent of the value of taxable property where proceeds are ap-

plied to the payment of "past indebtedness," refers to all indebtedness existing at the time of the filing of the petition for an election as to issuance of bonds, irrespective of whether such indebtedness was created before or after the adoption of the amendment, and does not refer merely to the indebtedness existing at the time of the adoption of the amendment. *Clinkscales v. Fant*, 116 S. C. 206, 107 S. E. 515 (1921).

This section is self-executing.—*Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918); *Chick Springs Water Co. v. State Highway Dept.*, 159 S. C. 481, 157 S. E. 842 (1931).

Relationship of section to S. C. Const., Art. 10, § 5.—S. C. Const., Art. 10, § 5 deals among other things with the amount of bonded debt which may be incurred by any town or city, and any provision saving the power to refund existing indebtedness, which it was deemed necessary to include in that proviso, was also included in this section of the Constitution. *Williams v. Rock Hill*, 177 S. C. 82, 180 S. E. 799 (1935).

S. C. Const., Art. 10, § 16 does not provide exception to section.—The provisions of the last section 16 to S. C. Const., Art. 10, providing for assessment upon abutting property by the town of Timmonsville, does not provide for an exception to the limitation on bonded indebtedness set out in this section of the Constitution. *Rose v. Baskins*, 178 S. C. 69, 182 S. E. 153 (1935).

Last assessment is used to ascertain validity of bonds.—In applying this section to ascertain if bonds issued are in excess of eight per cent "of the assessed value of all the taxable property therein," reference must be had to the last official assessment made by a town preceding the issue of the bonds. This assessment investors have the right to rely on when they make inquiry as to the power of the city to issue the amount of bonds in question. *State v. Tolly*, 37 S. C. 551, 16 S. E. 195 (1892); *State v. Cornwell*, 40 S. C. 26, 18 S. E. 184 (1893). Only in the absence of a legal city assessment should reference be had to the assessment of property within the city made for State and county purposes. *State v. Kelly*, 45 S. C. 457, 23 S. E. 281 (1895). Reference should be had to the legal assessment by the city to test whether the issue of bonds by the city is excessive, because the assessment and tax thereon is the source from which payment is to be derived. *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846 (1897).

Third proviso in section contains erroneous reference.—Reference to S. C. Const.,

Art. 4, § 5, in the third proviso is erroneous and should be S. C. Const., Art. 10, § 5. *Bray v. City Council*, 62 S. C. 57, 39 S. E. 810 (1901).

Valid amendment relative to limitations under two sections.—A single amendment to this section, limiting the indebtedness of municipalities by adding a proviso that the limitations imposed by this section and by S. C. Const., Art. 10, § 5, limiting the indebtedness of political divisions extending over the same territory or portions thereof, shall not apply to any bonded indebtedness where the proceeds of the bonds are applied to the purchase and maintenance of water-works plants and sewerage systems, is not violative of S. C. Const., Art. 16, § 2, declaring that where two or more amendments shall be submitted at the same time they shall be submitted so that the electors shall vote for or against each of them separately, since the amendment refers to the single subject of the limitation of indebtedness of municipalities. *Bethea v. Dillon*, 91 S. C. 413, 74 S. E. 983 (1912).

Ratifying act may not change joint resolution.—See note to S. C. Const., Art. 10, § 5.

Inadmissible reference as to resolution on amendment.—Where joint resolution proposing amendment to this section exempting the town of Clinton and the city of Camden from the limitations of municipal indebtedness fixed by this section and S. C. Const., Art. 10, § 5, was entered at least once upon the House and Senate journals with a yea and nay vote, and from said journals it appeared that the original joint resolution proposing the conference committee amendment referring only to the town of Clinton was regularly passed by the required two-thirds yea and nay vote, and was so entered in the Senate Journal, and that said joint resolution on the second reading in the House was by the necessary two-thirds yea and nay vote amended by adding the city of Camden and so entered in the House Journal, and the joint resolution was duly ratified, signed by the president of the Senate and speaker of the House, and approved by the Governor with the great seal of the State impressed thereon, it was held that it could not be shown by reference to the legislative journals that at the third reading in the House of the amended joint resolution it was read under its original title referring only to the town of Clinton, and that the city of Camden was not named in the title or body of the act as required by S. C. Const., Art. 16, § 1. *Stevenson v. Carrison*, 122 S. C. 212, 115 S. E. 251 (1922).

For additional related cases, see *Dick v. Scarborough*, 73 S. C. 150, 53 S. E. 86 (1905); *State v. Southern R. Co.*, 82 S. C. 12, 62 S. E. 1116 (1908).

Cited in *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *Stone v. City Council*, 113 S. C. 407, 102 S. E. 755 (1920); *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928); *Harby v. Jennings*, 112 S. C. 479, 101 S. E. 649 (1919); *Duke Power Co. v. Greenwood County*, 10 F. Supp. 854 (1935), 19 F. Supp. 932 (1937); *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934); *Bollin v. Graydon*, 177 S. C. 374, 181 S. E. 467 (1935); *Phillips v. Rock Hill*, 188 S. C. 140, 198 S. E. 604 (1938); *Kalber v. Stokes*, 194 S. C. 339, 9 S. E. (2d) 785 (1940).

II. BORROWING IN ANTICIPATION OF TAXES.

Money may be borrowed in anticipation of taxes.—This section of the Constitution was intended as a limitation upon the power of the municipality to create a debt by the issuance of bonds but not as a limitation upon the power to borrow money for short periods in anticipation of the collection of taxes. *Georgetown v. Elliott*, 95 F. (2d) 774 (1938).

To construe this section as forbidding the issuance of any sort of obligation in anticipation of taxes, except nonnegotiable certificates payable only out of tax collections for the year, would be to read into the proviso language which it does not contain and to establish a limitation on municipal borrowing in anticipation of tax collections which would be utterly unreasonable and which would result in making it practically impossible for municipalities in South Carolina to borrow money for carrying on the most necessary municipal activities pending the collection of their taxes. *Georgetown v. Elliott*, 95 F. (2d) 774 (1938).

The holding in *Georgetown v. Elliott*, 95 F. (2d) 774 (1938), which held that notes which were in form negotiable municipal obligations were authorized as such by § 47-275 of the Code and that there was nothing in this section of the Constitution of the State which prevented a municipal corporation from issuing tax anticipation notes of this character, was applied to a like set of facts in *Florence v. Anderson*, 95 F. (2d) 777 (1938).

For any legitimate corporate purpose.—S. C. Const., Art. 8, § 3, providing that no debt shall be contracted except in pursuance of law for public purposes specified by

law, is necessarily modified by this section which follows and allows indebtedness to be incurred in anticipation of the collection of taxes. There is in this last section no specification of any particular purposes for which such debts may be contracted, and the meaning, therefore, manifestly is that they may be contracted for any legitimate corporate purpose. *United States Rubber Products v. Batesburg*, 183 S. C. 49, 190 S. E. 120 (1937).

The bonded indebtedness of an incorporated city or town may not exceed eight per cent of the assessed value of its taxable property, but up to that limit the city may incur bonded indebtedness as long as the expenditures be for corporate or public purposes. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Such as recreation center and pool.—A recreation center and a swimming pool are for public or corporate purposes and, therefore, are for purposes for which taxes may be levied or indebtedness incurred. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Only one year's taxes may be pledged.—The contract of a city having a bonded indebtedness of more than eight per cent of its taxable property to pay a certain sum each year out of its current receipts for a number of years for the purpose of supplying the city with light and water is void as in violation of this section and S. C. Const., Art. 10, § 5. *Duncan v. Charleston*, 60 S. C. 532, 39 S. E. 265 (1901).

And statute to contrary is unconstitutional.—A statute authorizing cities to purchase or contract for waterworks and to issue certificates of indebtedness to be paid out of current taxes for future years is unconstitutional as violating this section prohibiting an increase of bonded indebtedness where the question of such indebtedness has not been submitted to the electors. *Duncan v. Charleston*, 60 S. C. 532, 39 S. E. 265 (1901).

Even if a contract does not actually add to the bonded indebtedness of a city, the provision of this section of our State Constitution would present an insuperable barrier to any attempt by the General Assembly of this State to clothe the city council of such city with any such power to pledge or dispose of the municipal income for an indefinite term of years. *Duncan v. Charleston*, 60 S. C. 532, 39 S. E. 265 (1901).

But certificates evidencing unpaid taxes do not create new indebtedness.—An act authorizing a city to issue certificates of indebtedness evidencing amounts of past-due

and unpaid taxes was held not to create a new indebtedness without petition and election in violation of S. C. Const., Art 2, § 13, or in excess of limit prescribed by this section. *Sullivan v. City Council*, 133 S. C. 189, 130 S. E. 876, 133 S. E. 340 (1925).

Notes are payable solely from taxes against which issued.—Municipal tax anticipation notes or certificates must show on their face that they are payable solely from taxes against which they have been issued. *Bolton v. Wharton*, 163 S. C. 242, 161 S. E. 454 (1931).

And law authorizing such notes cannot exceed constitutional power.—Statute authorizing municipal tax anticipation notes cannot exceed constitutional power and must be construed in connection therewith. *Bolton v. Wharton*, 163 S. C. 242, 161 S. E. 454 (1931).

Terms of section are exhaustive of power granted.—This provision was evidently inserted in this section in order to enable a city council to make some definite provision for current indebtedness which it was intended should be paid from taxes when collected but in anticipation of the collection of said taxes. Such a scheme would terminate with the year in which the taxes would be collected. It was not intended, nor did it so do, to clothe the city council with power by one contract to pledge a sum of each year's taxes for the period of fifty years next ensuing. The terms of the section are exhaustive of the power. The General Assembly could not add to it, for the expression of the Constitution whereby a municipal corporation is allowed to issue certificates of indebtedness in advance of the receipt of the taxes to pay such certificates is a negation of any power in a city government to do more than what is expressly contained in the grant of power heretofore recited as contained in such section of the Constitution. *Duncan v. Charleston*, 60 S. C. 532, 39 S. E. 265 (1901).

Essential elements of procedure involved.—The essential elements of the procedure set out in this section are: (1) the certificates must be issued in anticipation of the collection of the taxes, which necessarily means before the taxes may be due; (2) they must be issued at some time in the year in which the taxes are collectible; and (3) they must be payable alone out of the taxes against which they may be issued. *Sullivan v. City Council*, 133 S. C. 189, 130 S. E. 876, 133 S. E. 340 (1925).

III. SINKING FUND.

"Sinking fund" relates to cities and towns.—It appears that this section is the only

provision in the Constitution with regard to a sinking fund, and it specifically relates to "cities and towns." *State v. Moor-er*, 152 S. C. 455, 150 S. E. 269 (1929).

And is deducted from gross bonded debt to determine town's indebtedness.—In *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926), it was said that "It is well settled that in computing the bonded debt of a municipality for the purposes of a constitutional or statutory limitation upon bonded debt, there should be deducted from the gross bonded debt the sinking funds . . . pledged for the payment of the debt, and only the difference between the two amounts should be considered as the bonded debt of the municipality." *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Special funds may be pledged for retirement of State obligations.—An act, providing for financing construction of State highway system through State unit or district unit plan and for appropriation of proceeds of State gasoline tax and motor vehicle license tax for payment of evidences of indebtedness, is not void for failure to provide for levy of tax for sinking fund, since this section providing for sinking fund relates only to cities and towns and payments for retirement of obligations will be met from current funds, and special funds pledged are equivalent of sinking funds. *State v. Moor-er*, 152 S. C. 455, 150 S. E. 269 (1929).

Ordinance providing for sinking fund "if necessary" is valid.—Under this section, providing that cities in issuing bonds shall create sinking fund and under statute providing that the city council may collect sufficient annual tax to raise one-fortieth of entire bonded debt as sinking fund, an ordinance providing that, "if necessary," there shall be collected annually a sufficient tax to raise such sum is not invalid because of use of words "if necessary." *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917).

Election is not needed to refund indebtedness existing at adoption of Constitution.—Under this section, a city may issue bonds to refund a bonded indebtedness existing at the adoption of the S. C. Constitution of 1895 without submitting the question to a popular vote. *Jordan v. Greenville*, 79 S. C. 436, 60 S. E. 973 (1908). See also, *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897).

While the framers of our present Constitution provided stringent regulations as to a future bonded indebtedness in cities and towns, they were very careful to secure an absence of such requirements in

their application to such indebtedness which had already been created, as is seen in the concluding words of this section. *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897).

Bonds issued after Constitution adopted may be refunded.—The requirement in this section that any city or town "shall on the issuing of such bonds create a sinking fund for the redemption thereof at maturity" does not indicate an intent that bonds issued after the adoption of the present Constitution should not be refunded. *Williams v. Rock Hill*, 177 S. C. 82, 180 S. E. 799 (1935).

Without creating bonded indebtedness.—Since the issuance by the State of bonds to fund or refund a valid existing indebtedness does not create any debt within the meaning of S. C. Const., Art. 10, § 11, it logically follows that the issuance of bonds by a town or city to fund or refund valid outstanding bond does not create any bonded indebtedness within the meaning of this section of the Constitution. *Williams v. Rock Hill*, 177 S. C. 82, 180 S. E. 799 (1935).

And without regard to excess of unearned interest.—The aggregate excess of unearned interest creates no new debt of the municipality and should be given no legal weight or consideration in determining the amount of bonded indebtedness sought to be refunded. *Williams v. Rock Hill*, 177 S. C. 82, 180 S. E. 799 (1935).

Bonds are not "issued" until delivered.—City bonds are not "issued" until actually or constructively delivered under a contract of sale, so that even if this section, providing for the issuing of bonds by cities or towns and requiring them on issuing such bonds to create a sinking fund for their redemption, required such fund to be created before the bonds could be legally issued, unsold bonds still in the hands of a town council were not invalid on that ground, though dated after the creation of the sinking fund. *Black v. Fishburne*, 84 S. C. 451, 66 S. E. 681 (1910).

And date on bond is not conclusive of issue date.—The date printed or written on the bond is not conclusive of the date of its issue. They cannot be regarded as "issued" until a contract of sale is completed and the bonds actually or constructively delivered. *Black v. Fishburne*, 84 S. C. 451, 66 S. E. 681 (1910). See also, *Cleveland v. Spartanburg*, 54 S. C. 83, 31 S. E. 871 (1899).

IV. PRELIMINARY INCIDENTS TO ISSUING BONDS.

All taxable property is considered in assessing value of town property.—The Con-

stitution, in its terms, confines itself to the assessed value of all the taxable property and not that from which taxes are collected or levied. *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

Unless within class exempt from taxation.

—Property of a manufacturing company, not being within the classes of property which may be exempted from taxation under S. C. Const., Art. 8, § 6, is to be considered in determining the assessed value of the property of a town within this section prohibiting any issue of bonds by a town in excess of eight per cent of the assessed value of its taxable property. *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

Bonded debt must be determined according to assessment under section.—See note to S. C. Const., Art. 10, § 13.

Prior assessment may be used.—In determining whether an issue of bonds by a town was in violation of this section, providing that it shall not exceed eight per cent of the assessed value of its taxable property, the assessment prior thereto will be considered valid, though the assessors did not file a report thereof within ten days as directed by the town charter, where it was filed soon after, accepted, and acted on, the taxes being collected thereunder. *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

Debt may not be raised above constitutional limit.—See note to S. C. Const., Art. 10, § 5.

And whole debt is invalid if in excess of limit.—An act of the legislature having a debt of a township exceed in amount the limit fixed by the Constitution tenders the whole debt invalid. *Massachusetts & S. Const. Co. v. Cane Creek*, 45 F. 336 (1891).

Authority to issue "in any amount" is limited to eight per cent.—An act authorizing a town to issue bonds "in any amount" in aid of the construction of a railroad will be construed to mean any amount within the constitutional limit of eight per cent of the assessed value of its taxable property in conformity with this section and therefore not in conflict with it. *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898).

The charter of a town, permitting it to issue bonds in aid of the construction of

railroads to any amount, is not in conflict with this section, limiting the indebtedness of municipal corporations to eight per cent of their taxable property since the provision of the charter will be held to operate only within the constitutional limit. *Darlington v. Atlantic Trust Co.*, 68 F. 849 (1895).

In construing a statute or charter of a city, the presumption is that the legislature intended that bonds might be issued to the full limit authorized by the Constitution, that is, "in any amount" not prohibited by the organic law. *Darlington v. Atlantic Trust Co.*, 68 F. 849 (1895).

Majority of those voting is sufficient.—

See note to S. C. Const., Art. 8, § 5.

Separate submission of purposes of bonds is not required.—See note to S. C. Const., Art. 8, § 5.

Section indicates procedure for election on waterworks purchase.—S. C. Const., Art. 8, § 5, and this section indicate procedure for an election on question of purchase of waterworks as well as payment of price. *Enterprise Real Estate Co. v. City Council*, 107 S. C. 492, 93 S. E. 184 (1917).

Valid form for petition and notice for election.—Petition for election and notice ordering election on question of issuing bonds were proper where it was stated therein that the bonds were to be used for the purpose of erecting buildings, repairing, altering, and equipping old buildings for school purposes, under §§ 21-971 and 21-974 of the Code, and this section as amended. *Brice v. McDow*, 116 S. C. 324, 108 S. E. 84 (1921).

Legislature may authorize bond issue without election.—This section does not prevent legislature from authorizing issue of bonds by county without submitting question to election. *Carrison v. Kershaw County*, 83 S. C. 88, 64 S. E. 1018 (1909).

Act authorizing city to construct stadium and to issue bonds therefor payable solely from revenue derived from stadium, without approval of voters, was held not to violate this section limiting city's bonded debt because general credit of the municipality was not given. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Issuance, without approval of voters, of bonds for extension of city's waterworks system, secured by pledge of revenues from extension and present revenues of department, was held not to create "bonded debt" within this section. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

The requirement of this section that bond issues be submitted to the electors does not

apply to bonds issued by a specially created assessment district. *Sander v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

Town council's guarantee of assessment certificates is not part of debt.—The guaranty by a town council of payment of certificates of indebtedness representing assessments against abutting property is not a part of the bonded debt of the town within the meaning of this section forbidding any town or city from incurring any bonded debt which, including existing bonded indebtedness, shall exceed eight per cent of the assessed value of the taxable property therein. *McIntyre v. Rogers*, 123 S. C. 334, 116 S. E. 277 (1923). See also, *Brownlee v. Brock*, 107 S. C. 230, 92 S. E. 477 (1917); *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

V. APPLICATION OF SECTION.

Act authorizing issuance of bonds impliedly authorizes election for such.—An act authorizing board of trustees of Yorkville school district to issue \$35,000 in bonds furnished necessary machinery for an election to determine issuance of bonds under the subsequent constitutional amendment to this section removing the limits provided thereby, and an act of the legislature was unnecessary. *Brice v. McDow*, 116 S. C. 324, 108 S. E. 84 (1921).

"Building, directing, and maintaining" embraces "improving and extending."—As the proceeds of waterworks and sewerage bonds of the city of Florence were to be used for "improving and extending" the systems, these purposes were embraced within the amendment "building, directing, and maintaining," and as the proceeds of the street improvement bonds were to be used for "building, repairing, and improving" streets and sidewalks, the bond issues came within the provisions of the constitutional amendments to this section and S. C. Const., Art. 10, § 5, and did not exceed the constitutional or statutory limitations. *Lucas v. Barringer*, 120 S. C. 68, 112 S. E. 746 (1922).

Legislature may authorize issuance of school bonds.—See note to S. C. Const., Art. 10, § 11.

And may vest county board with power to tax for support of high schools.—An act, vesting a county board of education of a county with power to tax for support of high schools, is not violative of constitutional provisions intended to limit public debt, particularly S. C. Const., Art. 8, §§ 3, 7, and S. C. Const., Art. 10, §§ 5, 6, 8, and

11 to 13. *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

City is liable for improvements even though illegally made.—A city receiving the benefits of contracts for paving its streets, improving its waterworks system, etc., even though made in violation of the Constitution, would be liable on the doctrine of money had and received. *Lucas v. Florence*, 103 S. C. 169, 87 S. E. 996 (1916).

City may levy tax for interest on bonds.—The 1921 amendment to this section, providing that its limitations and those of S. C. Const., Art. 10, § 5, should not apply to the city of Charleston's bonded indebtedness nor to its certificates of indebtedness, the proceeds of which were solely applied to street, sidewalk, and drain improvements, did not by implication prohibit the levy by ordinance of a tax for interest and sinking fund for bonds voted for such improvements, since the only effect of such restriction would be to insure the revenue from being diverted to other purposes, thus rendering the bonds a more attractive investment. *Sullivan v. City Council*, 123 S. C. 91, 116 S. E. 104 (1923).

Contract with corporation to light streets must be voted on.—A contract between a town and a corporation to light the streets of the town for a period of ten years is of the nature of a bond debt, which, under this section, cannot be created without the sanction of a majority of the qualified electors of the town. *Fowler v. Town Council*, 90 S. C. 352, 73 S. E. 626 (1912).

Effective date of invalid bonds later paid by legislature.—Where township bonds are declared invalid by the courts and the legislature afterwards passes an act providing for the payment of such bonds, the debt represented by the bonds is incurred at the date of such act and assessments made after that date will not affect the validity of the debt. *Massachusetts & S. Const. Co. v. Cane Creek*, 45 F. 336 (1891).

Renewal of note as bonded debt instead of tax anticipation note.—Renewal note of town under seal and in form of bond, pledging full faith and credit of town for payment as well as current taxes, was held "bonded debt" rather than "tax anticipation note," and hence void where not authorized by election. *Tarver v. Johnston*, 173 S. C. 333, 175 S. E. 821 (1934).

Money borrowed from town water commission held not existing debt.—Money borrowed from town water commission, which was merely department of town itself, was held not existing indebtedness which would affect constitutional limitation on town's

indebtedness. *Tarver v. Johnston*, 173 S. C. 333, 175 S. E. 821 (1934).

Changes contemplated by 1911 amendment as to bonds for municipal utilities.—The provisions of this 1911 amendment [1911 (27) 13] show that two important changes were contemplated: first, the repeal of the limitation theretofore imposed upon the power of municipal corporations to incur a bonded indebtedness when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, etc.; and, second, to confer upon any and every municipal corporation in the State the power to incur a bonded indebtedness without limitation as to the amount thereof, provided the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant. *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916), dis. op. of Gary, C. J. See also, *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Limitations on waterworks bonds are repealed.—See note to S. C. Const., Art. 10, § 5.

And such bonds are not bonded indebtedness.—See note to S. C. Const., Art. 10, § 5.

Pledging revenues of waterworks system is valid.—Pledging of revenues of city's waterworks systems for payment of bonds to be issued for purpose of enlarging its sewerage system does not violate this section or S. C. Const., Art. 10, § 5, limiting city's bonded debt. *Roach v. Columbia*, 172 S. C. 478, 174 S. E. 461 (1934).

County bonds for hydroelectric plant are not prohibited debts.—County revenue bonds, issued to pay for construction of county hydroelectric plant, are not debts within constitutional limitations. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

If payable only from revenue of the plant.—Where a county, pursuant to statutory authority to build a hydroelectric plant, entered into a contract with the Federal Public Works Administrator providing that the county issue bonds the revenue from which would go for the construction of said plant, such bonds being payable only from such revenue, the bonds do not constitute debt within the meaning of this provision. *Duke Power Co. v. Greenwood County*, 19 F. Supp. 932 (1937).

Bond issues held valid as not submitting two purposes jointly.—Where the proceeds of an issue of bonds was to be used for the purpose of improving and extending the

waterworks and sewerage system of the city of Florence, and the issue was under the constitutional amendments to this section and S. C. Const., Art. 10, § 5, in neither of which amendments did the word "or" appear in connection with the words "waterworks and sewerage," the 1915 amendments' use of "exclusively for any of said purposes" negatives a disjunctive interpretation, "any" meaning one or more, and the bond issue was not void as submitting two purposes jointly as one proposition. (*Lucas v. Barringer*, 120 S. C. 68, 112 S. E. 746 (1922)).

In *McDaniel v. Bristol*, 160 S. C. 408, 158 S. E. 804 (1931), the court held that the city council properly submitted to voters as one question matter of purchase of waterworks plant and issuance of bonds therefor.

Indebtedness not including indebtedness for city sewerage.—Under this section, as amended, exempting certain cities, including Greenville, from certain limitations on bonded indebtedness prescribed therein, and by S. C. Const., Art. 10, § 5, the indebtedness of the city for sewerage and the indebtedness of the county and coterminal school district should not be included in computing the amount of bonded indebtedness which the city of Greenville was entitled to incur. *Beacham v. Greenville*, 104 S. C. 421, 89 S. E. 401 (1916).

Issue of bonds for waterworks even when debts "already incurred."—This section as amended, providing that the limitation imposed by this section shall not apply to the bonded indebtedness of the city of Florence when the proceeds of its bonds are applied exclusively for the building and maintenance of streets, waterworks, etc., or for the payment of debts "already incurred" exclusively for any of such purposes, applies to debts for streets and waterworks improvement when they are the debts "already incurred," and is not confined in its operation to the question of debt limit. *Lucas v. Florence*, 103 S. C. 169, 87 S. E. 996 (1916).

A city's past indebtedness, both for the paving of its streets and for the building and maintenance of its waterworks system, exceeding the limits allowed by the Constitution might be validated by a constitutional amendment where no vested rights were impaired. *Lucas v. Florence*, 103 S. C. 169, 87 S. E. 996 (1916).

Amendment excepting improvements relating to town of Marion.—Bonds issued for the installation of sanitary sewers and for the improvement of sidewalks and streets are deductible for the purpose of computing the limitation on the bonded indebted-

ness of the town of Marion. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

The sewage system referred to in the amendment relative to the town of Marion relates to sanitary sewers. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Bonds issued for storm sewers are not to be considered as a part of the bonded indebtedness of Marion in computing its constitutional debt limit, but may be disregarded as relating to the erection, repair, and maintenance of streets and sidewalks. *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

Bonds not increasing indebtedness of city of Columbia.—Bonds to be issued by the Columbia Housing Authority will not constitute an increase in the bonded indebtedness of the city of Columbia in violation of this section of the Constitution, for in view of § 36-165 of the Code, such bonds are not to be computed in arriving at the limitations of the bonded indebtedness of the city. *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

Bonds of Spartanburg may exceed 15 per cent.—See note to S. C. Const., Art. 10, § 5.

Proviso excepting city of Anderson is self-executing.—*Clinkscales v. Fant*, 116 S. C. 206, 107 S. E. 515 (1921).

Marlboro election petition need not be signed by majority of freeholders.—See note to S. C. Const., Art. 10, § 5.

Omitted provision in 1944 amendment concerning city of Orangeburg.—After incorporating the 1944 amendment, this provision relating to the city of Orangeburg now reads as set out in the 1944 amendment, except that after the words, "or for any or either of such purposes" is to be added the words "or for the payment of any indebtedness already incurred for any or either of such purposes." *Brailsford v. Walker*, 205 S. C. 228, 31 S. E. (2d) 385 (1944).

In *Brailsford v. Walker*, 205 S. C. 228, 31 S. E. (2d) 385 (1944), the court held that this 1944 constitutional amendment concerning the city of Orangeburg was properly adopted.

§ 8. Manufactories may be exempt from taxation.

Cities and towns may exempt from taxation, by general or special ordinance, except for school purposes, manufactories established within their limits for five successive years from the time of the establishment of such manufactories: *Provided*, That such ordinance shall be first ratified by a majority of such qualified electors of such city or town as shall vote at an election held for that purpose: *Provided*, That the General Assembly shall have power to extend the provisions of this Section to all manufacturing establishments of a capital of not less than twenty-five thousand (\$25,000.00) dollars and employing not less than fifteen people full time, desiring to locate in the Counties of Orangeburg and Florence, so as to exempt such establishments from county taxes, except for school purposes, for five years from the date of establishment: *Provided*, In Bamberg County all such manufactories shall be exempt from all county taxes except for school purposes, for five (5) years from the time of their establishment.

1927 (35) 700; 1929 (36) 124; 1927 (35) 702; 1930 (36) 1278.

Provided, That in Florence and Georgetown Counties furniture factories, pulp and paper mills, and cigarette and tobacco factories of value above one hundred thousand (\$100,000.00) dollars, shall be exempt from all county taxes, except for school purposes, for five (5) years from the time of their establishment.

1926 (34) 1379; 1927 (35) 69.

Provided, In Williamsburg and Laurens Counties all such manufactories of value above one hundred thousand (\$100,000.00) dollars shall be exempt from all county taxes, except for school purposes, for five years from the time of their establishment.

1925 (34) 614; 1927 (35) 156.

Provided, further, That the General Assembly shall have the power to extend the provisions of this Section to all manufacturing establishments with a capital of not less than twenty-five thousand (\$25,000.00) dollars desiring to locate in the County of Greenville and the County of Sumter.

1927 (35) 870; 1929 (36) 35.

Provided, Any county in the State shall be empowered to exempt all new manufacturing enterprises where the capital stock of said enterprise is not less than fifty thousand (\$50,000.00) dollars, and all additions to existing manufacturing enterprises where the cost of such addition is not less than fifty thousand (\$50,000.00) dollars, from all county taxes, except for school purposes, for five years from the establishment of such new manufacturing enterprises, or the additions to existing manufacturing enterprises.

1927 (35) 709; 1929 (36) 90.

Provided, further, That the General Assembly shall have the power to extend the provisions of this section to all manufacturing establishments with a capital of not less than twenty-five thousand (\$25,000.00) dollars desiring to locate in the County of Spartanburg.

1927 (35) 701; 1929 (36) 238.

Provided, In the Counties of York, Abbeville, Aiken, Allendale, Cherokee, Charleston, Colleton, Calhoun, Edgefield, Greenwood, Berkeley, McCormick, Union, Richland, Orangeburg, Saluda, Chesterfield, Hampton, Clarendon, Florence and Fairfield and Marion and Chester, all such cotton or textile enterprises of value above One Hundred Thousand Dollars shall be exempt from all county taxes, except for school purposes, for five years from the time of their establishment.

1925 (34) 611; 1927 (35) 54; 1928 (35) 1687; 1929 (36) 241.

Cross reference.—As to powers of General Assembly to provide for taxation and assessment, see S. C. Const., Art. 10, § 1.

This section is self-executing.—*Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930); *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

Manufactories may be exempted from taxation.—The policy of exempting property used in manufacturing was expressly approved and sanctioned by this section, and the practice of allowing such exemption has been largely exercised by cities and towns of this State. *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930).

In addition to cities and towns.—This section as originally adopted gave the General Assembly power to exempt manufacturing establishments from county taxes. The subsequent amendments authorizing the General Assembly to grant exemptions were entirely superfluous and did not take away any power already granted. *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

Majority of electors voting is sufficient.—*Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Cited in *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895); *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

§ 9. Armed police force.

No armed police force or representatives of a detective agency shall ever be brought into this State for the suppression of domestic violence; nor shall any other armed or unarmed body of men be brought in for that purpose, except upon the application of the General Assembly or of the Executive of this State (when the General Assembly is not in session), as provided in the

Constitution of the United States. The General Assembly shall provide proper penalties for the enforcement of the provisions of this Section.

§ 10. Boards of health.

It shall be the duty of the General Assembly to create Boards of Health wherever they may be necessary, giving to them power and authority to make such regulations as shall protect the health of the community and abate nuisances.

Cross reference.—As to statutory provisions relating to boards of health, see §§ 32-1 et seq. of the Code.

Section permits State to engage in health betterment.—Under this and related sections, navigation, health betterment, flood control, and reforestation of watersheds are public purposes in which the State is interested and may engage. *Clarke v. South Carolina Pub. Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935).

And permits boards of health to isolate diseased persons.—Municipal boards of health derive their authority to isolate persons afflicted with contagious diseases from this section. *Kirk v. Board of Health*, 83 S. C. 372, 65 S. E. 387 (1909).

Ordinances in conflict with this section are void.—*Murphy v. Cooper*, 149 S. C. 449, 147 S. E. 438 (1929). See also, *Law v. Spartanburg*, 148 S. C. 229, 146 S. E. 12 (1928).

Civil service is exam not required of health inspectors.—City ordinance placing health inspectors under civil service rules

and requiring them to take a civil service exam is void, since it is in conflict with this section and also with §§ 32-71, 32-73 and 32-78 of the Code authorizing the board of health to select its health inspectors without qualification or restriction on such right. *Murphy v. Cooper*, 149 S. C. 449, 147 S. E. 438 (1929).

Boards of health may charge for services rendered.—While the power to impose a remuneratory charge upon the citizens of the town for services rendered and for privileges granted or permitted to be enjoyed is not delegated to boards of health in specific terms by legislative enactment, such power is not forbidden by the Constitution or legislative acts, but is reasonably to be inferred from the provisions of this section and §§ 32-62, 32-67, 32-68, 32-78, 32-79 and 32-87 of the Code. *Marion v. Baxley*, 192 S. C. 112, 5 S. E. (2d) 573 (1939).

Cited in *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895); *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923).

§ 11. Alcoholic liquor and beverages.

In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, County and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations, as it deems expedient: *Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same.

Power to prohibit is not always co-extensive with power to grant, or, to express

the idea upon which this argument rests more accurately, the power to prohibit is not

limited by the power to grant. *Florence v. Brown*, 49 S. C. 332, 26 S. E. 880, 27 S. E. 273 (1897).

Municipal corporations may prohibit sale of liquor.—This section, giving the General Assembly the exclusive right to license the sale of liquors and prohibiting such body to delegate such power to municipal corporations, does not prevent the General Assembly from authorizing such corporations to prohibit the sale of liquors therein. *Florence v. Brown*, 49 S. C. 332, 26 S. E. 880, 27 S. E. 273 (1897).

Applied in *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 S. Ct. 293, 60 L. Ed. 658 (1916); *State v. State Dispensary Comm.*, 79 S. C. 316, 60 S. E. 928 (1908), affirmed in 213 U. S. 174, 29 S. Ct. 465, 53 L. Ed. 752 (1909); *Murray v. Wilson Distilling Co.*, 213 U. S. 151, 29 S. Ct. 458, 53 L. Ed. 742 (1909).

Cited in *Severance v. Murphy*, 67 S. C. 409, 46 S. E. 35 (1903); *Southern Liquor Distributors v. Daniel*, 179 S. C. 219, 183 S. E. 765 (1936).

§ 12. Prize fighting.

All prize-fighting is prohibited in this State, and the General Assembly shall provide by proper laws for the prevention and punishment of the same.

§ 13. Municipal ice plants.

Cities and towns may acquire, by construction or purchase and may operate manufactories or plants for making ice, and may furnish ice at wholesale or retail to individuals, firms and private corporations for reasonable compensation: *Provided*, That the purchase or construction of any such ice plant by any city or town heretofore made is ratified and confirmed: *And provided, further*, That no such construction or purchase shall be made hereafter except upon a majority vote of the electors in said cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns: *Provided, further*, The provisions hereof shall not apply to the counties of Aiken, Calhoun, Marion, Barnwell and Marlboro.

1920 (31) 1708; 1921 (32) 272.

§ 14. Extension of corporate limits of Greenville.

It shall be lawful to extend the corporate limits of the City of Greenville, from time to time, so as to include any adjacent territory, whether the said adjacent territory be in whole or in part an incorporated municipality under the plan hereinafter set forth. All such portions of the territory annexed to the city from time to time (whether such portions be contiguous or separated by other lands) as may belong wholly to cotton mills or other industrial corporations shall constitute a separate district, hereinafter referred to as the "Industrial Zone:" *Provided*, That in order to enter such industrial zone each such corporation shall have a locally invested capital of at least fifty thousand (\$50,000.00) dollars, and shall provide and maintain its own streets, sidewalks, street lights, sewers and water supply. The lands owned by any such corporation within the present city limits may enter or re-enter such industrial zone at any time by the consent of the City Council, Commissioners or other governing body of said city; and any lands owned or previously owned by such a corporation in any portion of said city, as enlarged from time to time, may cease to be a portion of such industrial zone, if such consent be given. Said industrial zone and all property taxable therein shall be exempt from municipal taxation (a) to pay any portion of the present bonded indebtedness of said

city, except the bonds of the par value of eighteen thousand five hundred (\$18,500.00) dollars issued in aid of Atlanta and Charlotte Air Line Railroad, the bonds of the par value of fifteen thousand five hundred (\$15,500.00) dollars, issued in aid of Greenville and Laurens Railroad, and the bonds of the par value of two hundred and fifty thousand (\$250,000.00) dollars, issued for the purpose of the purchase, enlargement and permanent equipment of the present City Hospital; (b) to pay for local improvements including streets, water and sewerage, in other parts of the city; (c) to pay for water, lights and services in caring for streets, sewerage and the disposal of garbage in other parts of the city. All property taxable in said industrial zone shall bear its proper portion of all city taxes for general purposes and of all liability for bonds subsequently issued by said city, except as in this Act otherwise provided. There shall be, and is hereby committed to each of the various corporations at any time constituting said industrial zone the exclusive control and full responsibility for the construction, maintenance and lighting of all buildings, streets, sidewalks, alleys, parks, and other public places and of all water mains and pipes, lateral sewers, and other local improvements lying wholly within its boundaries and the other parts of the city shall not be responsible for any part of the cost thereof, or for any other liability in connection therewith: *Provided*, That where any street, sidewalk, alley, park or other public place abuts the property of any such industrial corporation it shall bear its proportionate share of the cost of constructing, maintaining, improving and lighting the same, and of all water mains, pipes and lateral sewers therein. There shall be and is hereby committed to the portions of said city not included in such industrial zone the exclusive control of and full responsibility for the construction, maintenance and lighting of all streets, sidewalks, alleys, parks, and other public places, water mains, pipes, lateral sewers and other improvements therein and said industrial zone shall not be responsible for any part of the cost thereof or for any other liability in connection therewith. Such portions of the entire city so enlarged from time to time, as are not included in said industrial zone may be subdivided into districts and vested with such powers, control and responsibility regarding streets, local improvements, *et cetera*, and exempted, in whole or in part, from such taxes or other obligations concerning such local improvements in such manner and to such extent as may be prescribed from time to time by action of the City Council, Commissioners, or other governing body, if confirmed by a majority of the votes cast by the qualified electors residing within the present city limits and by a majority of the votes cast by the qualified electors residing within the area so annexed to the city from time to time, or if neither cast a majority of ballots against such action. All real and personal property taxable within the entire city, as so enlarged from time to time, shall be assessed, for the purpose of municipal taxation only, upon a just, equal and uniform basis by a Board of Commissioners or assessors to be appointed as may be provided by law. Except by consent of the corporations directly concerned or by consent of a majority of the industrial corporations constituting the industrial zone, no business license or occupation tax exceeding five hundred

(\$500.00) dollars per annum shall be imposed upon any corporation in said industrial zone to take effect prior to the year 1950. The State and City Boards of Health shall have all powers and authority over the said industrial zone and over all other portions of the entire city, as so enlarged from time to time, with which they may be vested now or hereafter over the territory comprised within the present city limits. Nothing contained herein shall be deemed to affect taxation of liability of any property within said industrial zone, or any other portion of said city, as so enlarged from time to time, for any present or future indebtedness of the Greater Greenville Sewerage District; or to preclude any right of the city, County or State to condemn property in any part of the city, as so enlarged from time to time, or to charge against abutting property owners the costs of street or other local improvements, of any portion thereof. The annexation provided for by this Act shall become complete and effective upon the adoption and ratification of this amendment: *Provided*, That no postponement of such adoption or ratification shall necessitate the holding of another election as to any territory once voted into the city. Subsequent elections may be held from time to time to determine the question of enlarging still further the corporate limits of said city, and all territory so annexed from time to time, shall be subject to the provisions hereof.

1927 (35) 703; 1929 (36) 272.

And, Provided, Further, That it may be lawful for the Board of Assessors or Appraisers having the power to assess property in the area so annexed and in the present city limits at the time thereof, to continue to assess property in any newly annexed territory, except any industrial zone territory, for the period of years fixed by ordinances of the City of Greenville, prior to the holding of the election on the question of annexation and the assessed value as fixed by any such authority for state and county purposes shall be used for the purpose of municipal taxation until the expiration of the time fixed in any such ordinance. Any such time may be shortened by a majority vote of the electors of both the City and of those in the affected territory: *And, Provided, Also*, That it is to be understood that this entire Section, and the various provisions thereof are intended to provide additional and further methods of annexation and are not to be construed as amending, restricting or barring annexation by, or under, any other method or plan now, or hereafter provided by law. *And, Provided, Still Further*, That this amendment shall be retroactive so as to render legal any election, or annexation, consummated thereunder even though such election or annexation take place prior to the ratification hereof.

1938 (40) 1871; 1939 (41) 451.

Cited in *Harrell v. Columbia*, 216 S. C. 346, 58 S. E. (2d) 91 (1950).

ARTICLE IX.

CORPORATIONS.

§ 1. Corporation defined.

The term corporation as used in this Article includes all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships, and excludes municipal corporations.

Cited in *Wilson v. Alderman & Sons Co.*,
69 S. C. 176, 48 S. E. 81 (1904).

§ 2. Charter of incorporation.

No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal or reformatory corporations as may be under the control of the State, or may be provided for in this Constitution, but the General Assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporations hereafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration: *Provided*, That the General Assembly may by a two-thirds vote of each House on a concurrent resolution allow a Bill for a special charter to be introduced, and when so introduced may pass the same as other Bills.

See Const, 1868, Art. XII, § 1.

Amending charters existing at time of Constitution for benefit thereunder.—Constructing this section with S. C. Const., Art. 9, §§ 16, 17, 18 and 21, it is evident that in order to make charters, in existence at the time the Constitution of 1895 was adopted, subject to provisions of these sections, it is necessary that there be legislation to that effect. *Lauraglen Mills v. Ruff*, 52 S. C. 448, 30 S. E. 587 (1898).

Right to amend charters is reserved by State.—Charters of banking corporations are subject to state's reserved right to amend, modify, or repeal. *Witt v. Peoples State Bank*, 166 S. C. 1, 164 S. E. 306 (1932).

Legislature may pass bill ratifying charter.—Under the proviso in this section, the legislature may pass a bill ratifying and confirming the charter of a company and investing the company with the power to construct and maintain a dam across a river, together with the right to acquire by purchase or condemnation proceedings. *McMeeken v. Central Carolina Power Co.*, 80 S. C. 512, 61 S. E. 1020 (1908).

Special powers may be granted upon concurrent resolution by both houses.—To permit a corporation to organize under the general law, procure a charter from the Secretary of State, and then have its charter amended by a special act of the General Assembly, conferring broad and unusual powers upon it without a concurrent resolu-

tion by a two-thirds vote of each house, would be a clear infringement of this provision of the Constitution. *Twin City Power Co. v. Savannah River Elec. Co.*, 163 S. C. 438, 161 S. E. 750 (1930).

Imposition of license tax is not impairment of contract.—Under this section, the legislature has unlimited power to alter corporate charters, so that the imposition of a license tax on a corporation organized under the general law subsequent to such Constitution does not constitute an impairment of the State's contract obligation to the corporation. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 58 S. E. 811 (1907).

Corporation may be given power to take property without consent.—When construed with S. C. Const., Art. 1, § 17, and Art. 9, § 20, this section means that private property shall not be taken for private use without the consent of the owner, except in cases where this power is conferred upon corporations by the General Assembly. *Boyd v. Winnsboro Granite Co.*, 66 S. C. 433, 45 S. E. 10 (1903); *Wilson v. Alderman & Sons Co.*, 69 S. C. 176, 48 S. E. 81 (1904).

This section does not relate to school districts.—This section relates to private and some quasi-public corporations, but not to school districts, as it is expressly provided that the legislature may make special laws affecting educational matters. *State v. McCaw*, 77 S. C. 351, 58 S. E. 145 (1907).

One attacking constitutionality of act has burden of proof.—Where respondents did not assert nor attempt to prove that the General Assembly, when it passed an act incorporating an orphanage, did not comply with the requirements of S. C. Const., Art. 9, § 2, that it should have a concurrent resolution adopted by a two-thirds vote of each house authorizing the introduction of a bill to incorporate the orphanage, it was held that it is established law that one who attacks the constitutionality of an act of the General Assembly must show it conclusively, and where the attack includes a matter of fact, the charge must be proved by him who makes it. *Epworth Orphanage v. Wilson*, 185 S. C. 243, 193 S. E. 644 (1937).

Act organizing corporation to build railroad station does not violate section.—An act organizing a corporation to build a union

station is not in violation of this section by granting to several railroads the said powers, where the act of incorporation was passed under a concurrent resolution. *Riley v. Charleston Union Station Co.*, 71 S. C. 457, 51 S. E. 485 (1905).

Act providing for wages for discharged laborers is constitutional.—An act providing for the payment to discharged laborers of wages up to the time of the discharge is sustainable as an amendment of the corporate charter of a company under this section. *Wynne v. Seaboard Air Line Ry.*, 96 S. C. 1, 79 S. E. 521 (1913).

Cited in *Charlotte, C. & A. R. Co. v. Gibbes*, 27 S. C. 385, 4 S. E. 49 (1887), affirmed in 142 U. S. 386, 12 S. Ct. 255, 35 L. Ed. 1051 (1892); *Riley v. Charleston Union Station Co.*, 67 S. C. 84, 45 S. E. 149 (1903); *Wilson v. Alderman & Sons Co.*, 69 S. C. 176, 48 S. E. 81 (1904).

§ 3. Transporting and transmitting corporations taxed as such; common law liability.

All railroad, express, canal and other corporations engaged in transportation for hire and all telegraph and other corporations engaged in the business of transmitting intelligence for hire are common carriers in their respective lines of business, and are subject to liability and taxation as such. It shall be unlawful for any such corporation to make any contract relieving it of its common law liability or limiting the same, in reference to the carriage of passengers.

General test of common carrier.—The most general test of a common carrier is the offer to carry for all alike for hire. *Reaves v. Western Union Tel. Co.*, 110 S. C. 233, 96 S. E. 295 (1918).

Common carrier need not be regularly engaged in business.—A common carrier may be such, though his business is not his exclusive business and he is not continually or regularly engaged in it. *Reaves v. Western Union Tel. Co.*, 110 S. C. 233, 96 S. E. 295 (1918).

And may be liable in tort for breach of contractual duty.—For dereliction in duty owing to public by common carrier, it is liable in tort to person injured, though tort originated in breach of contract, and actual and punitive damages may be awarded as circumstances warrant. *Reaves v. Western Union Tel. Co.*, 110 S. C. 233, 96 S. E. 295 (1918).

But is not strictly liable on contracts outside of scope of common carrier.—A common carrier may make special contracts outside its duties to the public, and may make some special contracts relative to such duties, if not such as are prohibited by statute or public policy, and under such con-

tracts he is not held to the strict liability of a common carrier. *Reaves v. Western Union Tel. Co.*, 110 S. C. 233, 96 S. E. 295 (1918).

Liability stipulation in pass is void when issued for consideration.—A railroad is not relieved of liability for the negligent killing of the wife of plaintiff, in spite of stipulation on pass on which she was riding, where it was shown that pass was issued on consideration that plaintiff go to a certain point in order to testify for railroad. *Nickels v. Seaboard Air Line Ry.*, 74 S. C. 102, 54 S. E. 255 (1906).

Section has been superseded as to liability in interstate travel.—This section has been superseded insofar as intrastate travel is concerned, by the Hepburn Act, 49 U. S. C. A., § 1 (7), which relates to free passes and exemption from liability by contract. *Parker v. Bissonette*, 203 S. C. 155, 26 S. E. (2d) 497 (1943).

A telephone company is a common carrier under this section. *State v. Citizens' Tel. Co.*, 61 S. C. 83, 39 S. E. 257 (1901).

And may be forced to furnish equal facilities.—A telephone company may be required by mandamus proceedings to furnish

all with equal facilities. *State v. Citizens' Tel. Co.*, 61 S. C. 83, 39 S. E. 257 (1901).

Without discrimination on rates or service.—By virtue of this constitutional provision, a telephone company is a common carrier of intelligence for hire. As such it has the duty to furnish service to all customers alike, and to charge them uniform rates therefor. It has no right to discriminate against one subscriber as to rates or service, or to give preferences or favors to others. *Miller v. Central Carolina Tel. Co.*, 194 S. C. 327, 8 S. E. (2d) 355 (1940).

Section is declaratory of common law as to telegraph companies.—The provision of this section that all telegraph companies engaged in transmitting intelligence for hire are common carriers is merely declaratory of the common law. *Reaves v. Western Union Tel. Co.*, 110 S. C. 233, 96 S. E. 295 (1918).

§ 4. Agent of corporation; office.

Every corporation organized or doing business in this State, other than religious, educational or benevolent associations, shall have and maintain at least one agent in this State upon whom process may be served, and at least one public office for the transaction of its business: *Provided*, This Section shall not apply to mercantile corporations: *Provided*, That nothing contained in this Section shall be construed to prohibit the General Assembly from providing for the service of process on any agent of a corporation so as to bind such corporation.

§ 5. Discrimination in charges.

No discrimination in charges or facilities for transportation of the same classes of freight or passengers, or for the transmission of intelligence within this State, or coming from or going to any other State, shall be made by any railroad or other transportation or transmission company between places or persons. Persons and property transported by any railroad, or any other transportation or transmission company or corporation, shall be delivered at any station, landing or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, landing or port. Excursion and commutation tickets may be issued at special rates. This Section shall not prevent the Railroad Commission from making such competitive rates as shall, in their judgment, be just and equitable between the Railroads and the public, at all Junctional and Competitive points, or at points where water competition controls the traffic, or at points where the competition of points located in other States may make necessary the prescribing of different rates for the protection of the commerce of this State.

Cross reference.—As to taxation and common-law liability of transporting and transmitting corporations, see S. C. Const., Art. 9, § 3.

Company may be required to deliver telegram outside free delivery limit.—Under its liability as a common carrier, a telegraph company must undertake to deliver a message to one outside the free delivery limits, if upon notice the sender pays for such delivery, provided such person lives within a reasonable distance from the office of delivery. *Campbell v. Western Union Tel. Co.*, 74 S. C. 300, 54 S. E. 571 (1906).

Stipulation on telegram as to claims does not limit liability.—The stipulation on printed form for telegram, requiring claims for damages or statutory penalties to be presented within a certain time, does not limit the liability of the company and is not binding on the sender. *Broom v. Western Union Tel. Co.*, 71 S. C. 506, 51 S. E. 259 (1905).

Discrimination by telephone company is expressly prohibited by this constitutional provision. *Miller v. Central Carolina Tel. Co.*, 194 S. C. 327, 8 S. E. (2d) 355 (1940).

§ 6. Transportation company may connect or cross lines of another.

Any railroad or other transportation corporation, and any telegraph or other transmitting corporation, organized under the laws of this State, shall have the right to connect its roads or lines, at the State line, with those in other States, and shall have the right to intersect with or cross any other railroad, street railway, transportation road or transmitting line, and shall each receive and transport the freight, passengers, cars (loaded or empty) and messages delivered to it by another without delay or discrimination.

Cross reference.—As to specific Code section regulating crossings, see § 58-992.

Section is not violated by § 58-992 pertaining to crossing regulations.—This section is not violated by § 58-992 denying the right to cross at grade except by consent of

the railroad commission and this only in the manner prescribed, since the constitutional right to cross does not necessarily imply the right to cross at grade. *Atlantic Coast Line R. Co. v. Railroad Comm.*, 89 S. C. 472, 72 S. E. 18 (1911).

§ 7. Consolidation of stock with competing line; jury may decide whether lines are parallel or competing.

No railroad, or other transportation company, and no telegraph or other transmitting corporation, or the lessees, purchasers or managers of any such corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or other transportation, telegraph or other transmitting company owning or having under its control a parallel or competing line; and the question whether railroads or other transportation, telegraph or other transmitting companies are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil causes.

Statute restricting certain railroad amalgamation is valid.—The act of 1894 [1894 (21) 812] restricting certain railroad amalgamation, now § 58-931 of the Code, is not inconsistent with or repealed by the Constitution of 1895. *Edwards v. Southern Ry. Co.*, 66 S. C. 277, 44 S. E. 748 (1903).

Cited in *State v. Southern Ry. Co.*, 82 S. C. 12, 62 S. E. 1116 (1908); *Augusta Power Co. v. Savannah River Elec. Co.*, 163 S. C. 541, 161 S. E. 767, 163 S. E. 822 (1930).

§ 8. No foreign corporation can build or operate a railroad in this State; no general or special law for foreign corporation, except on conditions.

The General Assembly shall not grant to any foreign corporation or association a license to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein.

Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic.

corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under any existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon the condition that the owners or stockholders thereof shall first organize a corporation in this State under the laws thereof, and shall thereafter operate and manage the same and the business thereof under said domestic charter.

- I. General Consideration.
- II. Application of Section.

Cross Reference.

As to specific Code sections providing for obtaining of charter by foreign corporations, see §§ 12-701 to 12-738.

I. GENERAL CONSIDERATION.

Object of section is to place foreign corporation of footing with domestic one.—The main object of this section was to require foreign railroad companies, operating or seeking to operate railroads in this State, to be placed on the same footing with domestic corporations as to their rights and liabilities under the jurisdiction of the state courts. *Carolina, C. & O. Ry. v. McCown*, 84 S. C. 318, 66 S. E. 418 (1909).

Section requires full incorporation in the State. *Lyles v. McCown*, 82 S. C. 127, 63 S. E. 355 (1909).

Under this section, a foreign corporation cannot operate a railroad in South Carolina at all. The owners or projectors must first become incorporated under the laws of South Carolina, and operate and manage the railroad and do business under the South Carolina charter. *Blue Ridge Power Co. v. Southern Ry. Co.*, 122 S. C. 222, 115 S. E. 306 (1922).

But railroad purchased with Interstate Commerce Commission approval may be operated without State approval.—Keeping in mind the fact that Congress has long made the maintenance and development of an economical and efficient railroad system a matter of primary national concern, the purchaser of railroad property with approval of the Interstate Commerce Commission may, as is authorized by the Interstate Commerce Act, 49 U. S. C., § 5, "own and operate any properties . . . acquired through said transaction without invoking any approval under State authority." *Seaboard Air Line R. Co. v. Daniel*, 333 U. S. 118, 68 S. Ct. 426, 92 L. Ed. 580 (1948) reversing 211 S. C. 122, 43 S. E. (2d) 839 (1947), without passing on contention that this section imposed burden on interstate

commerce in violation of the United States Constitution.

"Railroad" means property for operation of railroad.—"Railroad" as used in this section does not mean company or corporation, but it refers to the property fairly falling within the term railroad and including track, rolling stock, station houses, and generally such property as is usual, incident, or necessary to the operation of a railroad, doubtless including all franchises when conferred. *Carolina, C. & O. Ry. v. McCown*, 84 S. C. 318, 66 S. E. 418 (1909).

"Owners" applies to those with interest in railroad.—The term "owners" applies more especially to those who have right of property in a tangible railroad in existence in such form as to constitute the subject of ownership. *Carolina, C. & O. Ry. v. McCown*, 84 S. C. 318, 66 S. E. 418 (1909).

"Projectors" are those who plan railroad.—Projectors of a railroad not in existence, as distinguished from owners, are those who project, plan, or promote the prospective railroad. *Carolina, C. & O. Ry. v. McCown*, 84 S. C. 318, 66 S. E. 418 (1909).

Cited in Best v. Seaboard Air Line Ry., 72 S. C. 479, 52 S. E. 223 (1905); *Mathis v. Southern Ry. Co.*, 53 S. C. 246, 31 S. E. 240 (1898); *Wynne v. Seaboard Air Line Ry.*, 96 S. C. 1, 79 S. E. 521 (1913); *Seaboard Air Line Ry. Co. v. Daniel*, 333 U. S. 118, 68 S. Ct. 426, 92 L. Ed. 580 (1948), reversing 211 S. C. 122, 43 S. E. (2d) 839 (1947).

II. APPLICATION OF SECTION.

Foreign railroad may become domestic corporation.—Act providing that a foreign railroad corporation, by filing a copy of its charter with the Secretary of State, shall become a domestic corporation, with all the rights and liabilities thereof, does not violate this section. *State v. Tompkins*, 48 S. C. 49, 25 S. E. 982 (1896).

And may be estopped to deny it is domestic corporation.—A foreign railroad corporation filing a copy of its charter granted in another state with the Secretary of State, and carrying on business in the State, be-

comes a domestic corporation and is estopped to deny itself subject to service of summons as such. *Geraty v. Atlantic Coast Line Ry. Co.*, 80 S. C. 355, 60 S. E. 936 (1908).

Corporation organized for State operation is separate entity.—A Virginia corporation, owning a railroad, and a South Carolina corporation, organized under this section to operate the portion of said railroad within the state of South Carolina, are separate and distinct corporations. *Blue Ridge Power Co. v. Southern Ry. Co.*, 122 S. C. 222, 115 S. E. 306 (1922).

Domestic charter does not transfer property of foreign corporation.—The granting of a domestic charter for the operation, under this section, of that portion of a railroad owned by a foreign corporation within the State cannot have the effect of transferring the property of the foreign corporation to the domestic corporation. *Blue Ridge Power Co. v. Southern Ry. Co.*, 122 S. C. 222, 115 S. E. 306 (1922).

And domestic corporation is not responsible on contracts of parent organization.—A domestic corporation, organized under this section to operate so much of a foreign corporation's railroad as is within the State, is not responsible on the contracts of the parent organization. *Blue Ridge Power Co.*

v. Southern Ry. Co., 122 S. C. 222, 115 S. E. 306 (1922).

Railroad is nonresident where incorporated in another state.—A railroad company incorporated under the laws of another state is a nonresident of South Carolina for the purposes of removal of causes to a Federal court, though it has complied with the requirements for domestication of a corporation. *Calvert v. Southern Ry. Co.*, 64 S. C. 139, 36 S. E. 750, 41 S. E. 963 (1902), affirmed in 187 U. S. 636, 23 S. Ct. 844, 47 L. Ed. 343 (1902).

Right to operate railroad cannot be attacked collaterally by individual.—The complaint of a railroad company to recover part of its right of way, though alleging that it is chartered under the laws of another state, and doing business as a common carrier, is not subject to demurrer on the ground that the corporation is operating its road in violation of this section and so has not capacity to sue, there not only being an allegation in the complaint that plaintiff is doing the business of a common carrier in the State under its laws, but as between a corporation and an individual, the right of a railroad to operate its road is not open to attack in a collateral proceeding. *Atlantic Coast Line R. Co. v. Epperson*, 85 S. C. 134, 67 S. E. 235 (1910).

§ 9. Banks.

The General Assembly shall have no power to grant any special charter for banking purposes, but corporations or associations may be formed for such purposes, under general laws, with such privileges, powers and limitations, not inconsistent with this Constitution, as it may deem proper. The General Assembly shall provide by law for the thorough examination and inspection of all banking and fiscal corporations of this State.

See Const. 1868, Art. XII, § 6.

§ 10. Stock issued for money or labor.

Stock or bonds shall not be issued by any corporation save for labor done, or money or property actually received or subscribed; and all fictitious increase of stock or indebtedness shall be void.

Cross reference.—As to specific Code sections covering fictitious issue of stock, see §§ 12-231 and 58-682.

Corporation need not pay for stock sold to third party.—As a general rule, a corporation cannot legally bind itself to pay the purchase price of stock sold by a stockholder to a third person, and this principle is embraced in the inhibition of this section. *Shumpert v. National State Bank*, 231 F. 82 (1916).

Stockholders may not object to pledging certain depreciated stock.—The stockhold-

ers of a corporation cannot object, under this section, to the pledging of unissued stock for money loaned, the stock being in a depreciated condition and being issued at the rate of \$200 for each \$100 of money lent, where the complainant refused to accept the stock in payment of his debt, the stock being issued for money paid. *Granite Brick Co. v. Titus*, 226 F. 557 (1915).

And bonds with face value greater than sum borrowed may be pledged.—This section does not render invalid bonds of a corporation pledged by it as security for money

borrowed and used in the purchase of machinery necessary in its business, although the face value of the bonds may be greater

than the sums borrowed. *Firth Co. v. South Carolina Loan, etc., Co.*, 122 F. 569 (1903).

§ 11. Election of officers of corporations.

The General Assembly shall provide by law for the election of directors, trustees or managers of all corporations so that each stockholder shall be allowed to cast, in person or by proxy, as many votes as the number of shares he owns multiplied by the number of directors, trustees or managers to be elected, the same to be cast for any one candidate or to be distributed among two or more candidates.

Cross references.—As to specific sections of the Code covering election of directors, etc., see §§ 12-251 and 12-253.

Act failing to include provisions of section violates it.—An act failing to make provision for the election of directors, trustees, or managers of the corporation which may be created thereunder and the voting of the stock, as required by this section, violates the section. *Carolina, C. & O. Ry. v. McCown*, 84 S. C. 318, 66 S. E. 418

(1909). (See *Looker v. Maynard*, 179 U. S. 46, 21 S. Ct. 21, 45 L. Ed. 79 (1900), declaring constitutional a similar provision in another state.)

Stock may be held and voted by other than owners.—There is no indication in this section of the Constitution that it is against the public policy of the State for stock in corporations to be held and voted by others than the true owners. *Alderman v. Alderman*, 178 S. C. 9, 181 S. E. 897 (1935).

§ 12. Business of corporations.

Corporations shall not engage in any business except that specifically authorized by their charters or necessarily incident thereto.

Quoted in *Cowart v. City Council*, 67 S. C. 35, 45 S. E. 122 (1903).

§ 13. Trusts, combinations, etc.

The General Assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by Commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

Cross reference.—As to specific Code section treating illegal trusts and combinations, see § 66-51.

Purpose of section.—The direction of this section of the Constitution is not to enact laws against all trusts, combinations, contracts and agreements, but only against those which are against public welfare. *Miles Laboratories v. Seignious*, 30 F. Supp. 549 (1939).

Legislature determines agreements against public welfare.—The legislature must primarily determine what agreements are against public welfare. *Henderson v. McMaster*, 104 S. C. 268, 88 S. E. 645

(1916); *Miles Laboratories v. Seignious*, 30 F. Supp. 549 (1939).

And legislates against discrimination and monopoly.—The General Assembly is fully empowered to legislate against unfair discrimination and monopoly, not only by reason of this section of the Constitution but also by reason of the police powers of the State. *State v. Standard Oil Co.*, 195 S. C. 267, 10 S. E. (2d) 778 (1940).

Trust defined.—A trust has been defined as a contract, combination, confederation, or understanding, express or implied, between two or more persons to control the price of a commodity or service for the

benefit of the parties thereto and to the injury of the public, tending to create a monopoly. *Wood Mowing, etc., Co. v. Greenwood Hdw. Co.*, 75 S. C. 378, 55 S. E. 973 (1906).

Test as to reasonableness of trust.—The test to determine whether a contract in partial restraint of trade is reasonable is whether it affords only a fair protection to the interests of the parties in whose favor it is made without being so large in its operation

as to interfere with the interests of the public. *Wood Mowing, etc., Co. v. Greenwood Hdw. Co.*, 75 S. C. 378, 55 S. E. 973 (1906).

Fair trade laws are constitutional.—Sections 66-91 to 66-95, inclusive, known as the Fair Trade Act, which authorize contracts fixing minimum resale prices for trade-marked goods, do not violate this section of the Constitution. *Miles Laboratories v. Seignious*, 30 F. Supp. 549 (1939).

§ 14. The Public Service Commission.

A commission is hereby established to be known as "The Railroad Commission", which shall be composed of not less than three members, whose powers over all transporting and transmitting corporations, and duties, manner of election and term of office shall be regulated by law; and until otherwise provided by law the said commissioners shall have the same powers and jurisdiction, perform the same duties and receive the same compensation as now conferred, prescribed and allowed by law to the existing railroad commissioners: *Provided*, That the members thereof shall be elected at the expiration of the terms of the present Railroad Commissioners, who are hereby continued in office for the terms for which they were elected. *Provided*, That upon the adoption and ratification of this amendment the said Commission shall be known as The Public Service Commission.

1934 (38) 1629; 1935 (39) 25.

Cross reference.—As to specific Code sections covering powers of Public Service Commission, see §§ 58-119, 58-120 and 58-1145.

Public Service Commission has limited powers.—The Public Service Commission is a governmental body of limited power. Under the provisions of this section of the Constitution and § 58-51 of the Code, the Commission has only those powers vested in it by act of the General Assembly. *Piedmont & Northern Ry. Co. v. Scott*, 202 S. C. 207, 24 S. E. (2d) 353 (1943).

This section does not undertake to specify the jurisdiction of the Commission, but contemplates that this is to be fixed by statute. *Columbia Gaslight Co. v. Mobley*, 139 S. C. 107, 137 S. E. 211 (1927).

It may regulate telephone companies.—The Commission is granted far-reaching powers to make and enforce reasonable rules and regulations for telephone companies with reference to the service furnished and the rates charged. *Miller v. Central Carolina Tel. Co.*, 194 S. C. 327, 8 S. E. (2d) 355 (1940).

And may require railroads to build crossings.—Section 58-1145, empowering rail-

road commission (now the Public Service Commission) to require railroads passing through city to build connecting track, cost to be borne in proportion fixed by the Commission, without expressly providing that notice of hearing be given to railroads, is not violative of due process clause, U. S. Const., Amend. 14, in view of the hearing provided by such section. *Shealy v. Seaboard Air Line Ry. Co.*, 131 S. C. 144, 126 S. E. 622 (1924).

But may not provide routing system for freight handling.—It is beyond the power of the Public Service Commission to issue an order providing for a State-wide official routing system for the handling of freight in intrastate commerce by railroads. *Piedmont & Northern Ry. Co. v. Scott*, 202 S. C. 207, 24 S. E. (2d) 353 (1943).

For additional related case, see *Railroad Com'rs v. Columbia, N. & L. R. Co.*, 82 S. C. 418, 64 S. E. 240 (1909).

Cited in *Blease v. Charleston & W. C. Ry. Co.*, 146 S. C. 496, 144 S. E. 233 (1928); *Columbia v. Pearman*, 180 S. C. 296, 185 S. E. 747 (1936); *State v. Bates*, 198 S. C. 430, 18 S. E. (2d) 346 (1941).

§ 15. Rights and remedies of railroad employees.

Every employee of any railroad corporation shall have the same rights and remedies for any injury suffered by him from the acts or omissions of said corporation or its employees as are allowed by law to other persons not employees, when the injury results from the negligence of a superior agent or officer, or of a person having a right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow servant engaged in another department of labor from that of the party injured, or of a fellow servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways or appliances shall be no defence to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them. When death ensues from any injury to employees, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, expressed or implied, made by any employee to waive the benefit of this Section shall be null and void; and this Section shall not be construed to deprive any employee of a corporation, or his legal or personal representative, of any remedy or right that he now has by the law of the land. The General Assembly may extend the remedies herein provided for to any other class of employees.

- I. General Consideration.
- II. Negligence of Fellow Servant.
- III. Assumption of Risk.
- IV. Release from Liability.

Cross Reference.

As to specific Code sections covering liability of railroad for injuries to employees, see §§ 58-1231 to 58-1239.

I. GENERAL CONSIDERATION.

Section does not violate U. S. Constitution.—The provisions of this section are a conspicuous instance of a change in the rules of evidence, and the section is not in violation of the Fourteenth Amendment of the U. S. Constitution. *Drennan v. Southern Ry. Co.*, 91 S. C. 507, 75 S. E. 45 (1912).

And limits defense of fellow servant's negligence.—The sole purpose and effect of this section is to limit the defense of the negligence of a fellow servant. *Johnson v. Charleston & S. Ry. Co.*, 55 S. C. 152, 32 S. E. 2, 33 S. E. 174 (1899).

But is not limited to those actually operating trains.—A contention that this section is repugnant to the Fourteenth Amendment of the U. S. Constitution unless construed as applicable only to employees engaged in actual train operation or subject to dangers directly connected therewith was held to be without merit in *Becker v. Atlantic Coast*

Line R. Co., 128 S. C. 131, 121 S. E. 476 (1924).

It confers right without creating presumption.—While this section confers a right, it does not create a presumption or rule of evidence. *Land v. Southern Ry. Co.*, 67 S. C. 290, 45 S. E. 203 (1903).

And does not place employees in same position as passengers.—Although this section puts employees in the same position as other persons in regard to recoveries for injuries, it does not place them in the same class as passengers. *Land v. Southern Ry. Co.*, 67 S. C. 290, 45 S. E. 203 (1903).

Meaning of term "appliances."—The term "appliances" as used in this section includes a force of hands sufficient to operate machinery, etc. *Bodie v. Charleston & W. C. Ry. Co.*, 61 S. C. 468, 39 S. E. 715 (1901), affirmed in 66 S. C. 302, 44 S. E. 943 (1903).

"Railroad corporation" includes lumber company railroad.—Where defendant corporation engaged in the manufacture of lumber operated a logging railroad for its own use and also hauled some freight for persons who lived along its line, it was a "railroad corporation" under this section. *Holmes v. Hamilton Ridge Lumber Corp.*, 120 S. C. 165, 112 S. E. 536 (1922).

And section now covers street railways.—Under § 58-1304, extending the provisions of this section to street railways, it is not

error to charge that doctrine of assumption of risk does not apply to case, if plaintiff, power plant employee, was employee of street railway corporation. *Veronee v. Charleston Consol. Ry., etc., Co.*, 152 S. C. 178, 149 S. E. 753 (1929).

But not telegraph companies.—The provisions of this section do not apply to telegraph companies. *Brabham v. American Tel. & Tel. Co.*, 71 S. C. 53, 50 S. E. 716 (1905).

For case discussing this section in detail, see *Whisenhunt v. Atlantic Coast Line R. Co.*, 195 S. C. 213, 10 S. E. (2d) 305 (1940).

For additional related cases, see *Wilson v. Charleston & S. Ry. Co.*, 51 S. C. 79, 28 S. E. 91 (1897); *Hallums v. Southern Ry. Co.*, 82 S. C. 299, 64 S. E. 147 (1909).

Cited in *Johnson v. Atlantic Coast Line R. Co.*, 116 S. C. 135, 107 S. E. 31 (1921).

II. NEGLIGENCE OF FELLOW SERVANT.

Servant may recover for injuries caused by fellow servant directing him.—Under this section a servant may recover of a railroad company for injuries caused by the carelessness of a fellow servant directing him. *Bussey v. Charleston & W. C. Ry. Co.*, 52 S. C. 438, 30 S. E. 477 (1898); *Rutherford v. Southern Ry. Co.*, 56 S. C. 446, 35 S. E. 136 (1900).

Test of to "person having right to control services."—The usual test to determine whether a superior servant is a fellow servant or a vice principal is not whether the superior has power to direct the services of the other, but whether the offending servant is in the performance of some duty which the master has intrusted to him and which the master owes to the injured servant. *James v. Fountain Inn Mfg. Co.*, 80 S. C. 232, 61 S. E. 391 (1908).

Question is one for jury.—Whether a railroad track foreman was under the control of a supervisor of bridges, so that under this section the railroad company was liable for the negligence of the supervisor causing injury to the foreman, is, under the evidence, for the jury. *Smith v. Southern Ry. Co.*, 93 S. C. 115, 76 S. E. 109 (1912).

Farmer temporarily employed is not "fellow servant."—Under this section, a farmer in the temporary employ of a railroad as section hand taking out defective cross-ties and spacing ties under the direction of a section master was not a "fellow servant." *Williams v. Seaboard Air Line Ry.*, 105 S. C. 468, 90 S. E. 27 (1916).

Engineer and conductor are not fellow servants under the provisions of this sec-

tion. *Snipes v. Southern Ry. Co.*, 166 F. 1 (1908).

Nor are crossing watchman and train crew.—Under this section, a watchman at a railroad crossing is engaged in "another department of labor" from fellow servants running a train across the crossing. *Betchman v. Seaboard Air Line Ry.*, 75 S. C. 68, 55 S. E. 140 (1906).

But engineer and brakeman are fellow servants.—A brakeman on a freight train is not under the direct control of the engineer, within this section, but the engineer and the brakeman are fellow servants. *Pagan v. Southern Ry. Co.*, 78 S. C. 413, 59 S. E. 32 (1907).

As are roadmaster and conductor of wrecking train.—A roadmaster who has control of the wrecking train while at work and attends all wrecks on his division is a fellow servant with the conductor of the train and cannot recover from the railroad company, where, after the train was divided by an agreement between him and the conductor, the engineer and the wrecking train struck the detached car on which the roadmaster was standing in moving a part of the train under the direction of the conductor, as all were engaged in a common enterprise—the removal of the wreck. *McDaniel v. Charleston & W. C. R. Co.*, 70 S. C. 95, 49 S. E. 2 (1904).

And bystander may be fellow servant with section hand.—A bystander on the occasion of a fire at a railway station, called in by the station agent to assist in pushing cars from the fire, is a fellow servant of a section hand engaged in the same work, and if injured by the latter's negligence, the company is not responsible. *Jackson v. Southern Ry. Co.*, 73 S. C. 557, 54 S. E. 231 (1906).

This section applies to servant working as assistant car repairer and workman about the yards and tracks of a railroad company, while working underneath a defective and overloaded car according to the directions of one in charge of the repairs. *Whisonant v. Atlanta & C. A. L. Ry. Co.*, 86 S. C. 300, 68 S. E. 566 (1910).

Company is liable for conductor's negligence.—In running a train the conductor is a representative of the company, and where an injury is caused by his negligence, the company is liable. *Wilson v. Southern Ry. Co.*, 73 S. C. 481, 53 S. E. 968 (1906); *Reed v. Southern Ry. Co.*, 75 S. C. 162, 55 S. E. 218 (1906).

And for foreman's acts as laborer.—Where a foreman, while in control of work and directing the servants under him, performs an act of manual labor pursuant to

and in furtherance of the directions which he has previously given in regard to the particular work, he does not cease thereby to be a superintendent for whose negligence the master is liable. *Rippy v. Southern Ry. Co.*, 80 S. E. 539, 61 S. E. 1010 (1908).

One assuming relation of servant at request of superior officer may recover.—A railroad is liable under this section for injuries suffered by plaintiff where there was evidence that plaintiff had assumed the relation of a servant at the request of a superior officer of the railroad company, and the injury was caused by a failure to uncouple certain cars when it was the duty of the railroad to see that they were uncoupled. *Jackson v. Southern Ry. Co.*, 73 S. C. 557, 54 S. E. 231 (1906).

III. ASSUMPTION OF RISK.

Section deprives employer of defense of assumption of risk.—The object of this section was to take from a defendant that failed to furnish suitable machinery the right to defeat an action by the employee by showing that he did not act with due care in voluntarily operating the machinery after knowledge of its defective condition. *Youngblood v. South Carolina, & G. R. Co.*, 60 S. C. 9, 38 S. E. 232 (1901).

But does not apply to contributory negligence.—The provisions of this section apply only to the defense of assumption of risk by an employee and do not refer to the question of contributory negligence. *Bouchillon v. Charleston & W. C. R. Co.*, 90 S. C. 42, 72 S. E. 634 (1911).

Assumption of risk does not apply to intrastate commerce action.—Under this section, assumption of risk is not a defense applicable to a cause of action arising under the intrastate commerce laws. *Johnson v. Atlantic Coast Line R. Co.*, 112 S. C. 47, 99 S. E. 755 (1919).

And it is not considered where not pleaded.—Where, in an action for personal injuries, the defense of assumption of the risk is not pleaded and the question does not fairly arise on the record, it is not error for the court to refuse to go into the question as to whether the provision relating to the assumption of risk by employees is in violation of the Fourteenth Amendment of the U. S. Constitution. *Montgomery v. Seaboard Air Line Ry.*, 73 S. C. 503, 53 S. E. 987 (1906).

Work must appear obviously or inherently dangerous.—Under this section and § 58-1233, even if a plaintiff had knowledge that he might suffer injury by reason of under-

taking the work which he was directed to do with insufficient help, he would not be deemed to have assumed the risks of going ahead with it, where it did not appear obviously or inherently dangerous. *Boyleston v. Southern Ry. Co.*, 211 S. C. 232, 44 S. E. (2d) 537 (1947).

Contributory negligence of employee avoids liability by employer.—If an injured servant has the choice of two ways to perform a duty, one entirely safe and the other obviously and greatly dangerous, and he adopts the dangerous way and is injured, he is guilty of contributory negligence as a matter of law and is barred from recovering therefor. But, in order for the employer to relieve itself of liability, it is necessary for him to show not only that the employee knew the danger or that it was so obvious that he should have known it, but also that the employee comprehended or appreciated the danger. *Whisenhunt v. Atlantic Coast Line R. Co.*, 195 S. C. 213, 10 S. E. (2d) 305 (1940).

Where plaintiff, with full knowledge of the danger, attempted to push down a spring connected with the dash pot of an engine with his hand in order to make the same operate, and his hand slipped and was injured in the machinery, he assumed the risk and was not relieved by the provisions of this section. *James v. Fountain Inn Mfg. Co.*, 80 S. C. 232, 61 S. E. 391 (1908).

Recovery by brakeman having knowledge of coupling defect.—A brakeman injured while attempting to couple cars containing defective coupling devices did not assume the risk because he had knowledge of the defect. *Gilliland v. Charleston & W. C. Ry. Co.*, 86 S. C. 137, 68 S. E. 186 (1910). See also, *Youngblood v. South Carolina & G. R. Co.*, 60 S. C. 9, 38 S. E. 232 (1901); *Carson v. Southern Ry. Co.*, 68 S. C. 55, 46 S. E. 525 (1903), affirmed in 194 U. S. 136, 24 S. Ct. 609, 48 L. Ed. 907 (1904); *Davis v. North Western R. Co.*, 75 S. C. 303, 55 S. E. 526 (1906); *Whisonant v. Atlanta & C. A. L. Ry. Co.*, 86 S. C. 300, 68 S. E. 566 (1910).

Recovery by conductor having knowledge of defective cars.—A conductor is not barred of his right to recover for injuries arising from defective cars, unless he would have regarded them as dangerous or unsafe if he had exercised ordinary prudence. *Barksdale v. Charleston & W. C. Ry. Co.*, 66 S. C. 204, 44 S. E. 743 (1903).

Voluntary operation of defective cars is question for jury.—Whether a freight conductor, injured while coupling cars which were unsafe for lack of a proper lever, voluntarily operated the cars within the pro-

visions of this section is a question for the jury. *Hall v. Northwestern R. Co.*, 81 S. C. 522, 62 S. E. 848 (1908).

IV. RELEASE FROM LIABILITY.

Constitutionality of contract releasing employer from liability.—*Johnson v. Charleston & S. Ry. Co.*, 55 S. C. 152, 32 S. E. 2, 33 S. E. 174 (1899).

Implied agreement to release company is void.—Any implied agreement to release the company from liability to an engineer for negligence of a conductor, while working under a rule providing that the engineer shall be jointly liable with the conductor for the movement of the trains, is null and void. *Wilson v. Southern Ry. Co.*, 73 S. C. 481, 53 S. E. 968 (1906).

§ 16. Existing charters.

All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this Constitution shall be subject to the provisions of this Article.

Liability of stockholders of bank chartered prior to adoption of this section is not governed hereby. *Man v. Boykin*, 79 S. C. 1, 60 S. E. 17 (1908).

Cited in *Lauraglen Mills v. Ruff*, 52 S. C. 448, 30 S. E. 587 (1898).

§ 17. Laws for benefit of corporation passed only on conditions.

The General Assembly shall never remit the forfeiture of the franchise of any corporation now chartered, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchise subject to the provisions of this Constitution, and the acceptance by any corporation of any provision of any such laws or the taking of any benefit or advantage from the same shall be conclusively held an agreement by such corporation to hold its charter and franchises under the provisions of this Article.

Quoted in *Lauraglen Mills v. Ruff*, 52 S. C. 448, 30 S. E. 587 (1898).

§ 18. Liability of stockholders.

The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them.

1934 (38) 1628; 1935 (39) 35.

See Const. 1868, Art. XII, § 4.

Cross reference.—As to specific Code section providing for liability of stockholders in corporations in general, see §§ 12-71 to 12-77.

Liability greater than amount of stock could formerly be imposed.—Prior to the Constitution of 1895, the legislature was not prohibited from imposing a greater liability than the amount of stock, since the corresponding section of the Constitution of 1868 was not self-executing. *Parker v. Carolina Sav. Bank*, 53 S. C. 583, 31 S. E. 673 (1898).

Reduction of liability on surrender of old charter.—In order to reduce its liability to that prescribed in the S. C. Constitution of 1895, a corporation existing at the time of

the adoption of that Constitution must surrender its old charter and secure a new one as prescribed by statute. *Lauraglen Mills v. Ruff*, 52 S. C. 448, 30 S. E. 587 (1898).

Repeal of double liability provisions relating to bank stockholders.—See *Henry v. Alexander*, 186 S. C. 17, 194 S. E. 649 (1937), for discussion of the repeal of constitutional and statutory provisions (in this section of the S. C. Constitution and in former § 7868 of the Code of 1932, now repealed) concerning the former double liability of stockholders in insolvent banks.

For other cases dealing with former double liability provisions of bank stockholders prior to repeal thereof, see *Boykin v. Smith*, 188 S. C. 53, 198 S. E. 171 (1938);

Nettles v. Sottile, 184 S. C. 1, 191 S. E. 796 (1937); Brice v. Cleveland, 179 S. C. 283, 184 S. E. 574 (1936); State v. Gibbes, 171 S. C. 209, 172 S. E. 130 (1933), affirmed in 290 U. S. 326, 54 S. Ct. 140, 78 L. Ed. 342 (1933); South Carolina Sav. Bank v. Spann,

169 S. C. 475, 169 S. E. 282 (1933); Bilt-rite Bldg. Co. v. Elliott, 166 S. C. 534, 165 S. E. 340 (1932); Nettles v. Rhett, 94 F. (2d) 42 (1938).

§ 19. Corporations cannot do act prohibited through controlling interest in other corporations.

Nothing prohibited in this Article shall be permitted to be done by any corporation or company, persons or person, either for its or their own benefit or otherwise, by its or their holding or controlling in its or their own name or otherwise, or in the name of any other person or persons, or other corporation or company whatsoever, a majority of the capital stock, or of bonds having voting power, of any railroad or transportation company, or corporation created by or existing under the laws of this State, or doing business within this State.

Prohibition herein is against holding majority of stock.—This section does not prohibit one corporation from holding stock in a State corporation, but the prohibition

is against holding a majority of the stock. Carolina, C. & O. Ry. v. McCown, 84 S. C. 318, 66 S. E. 418 (1909), dis. op. of Jones, C. J.

§ 20. Right of way.

No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner or secured by a deposit of money, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

See Const. 1868, Art. XII, § 3.

- I. General Consideration.
- II. Full Compensation.
- III. Compensation Ascertained by Jury.
- IV. Application to Railroads and Highways.

Cross References.

As to specific sections providing for condemnation of rights of way by railroads, see §§ 58-771 to 58-787. As to condemnation by light and power companies, see § 24-12. As to condemnation for drainage ditches, see § 33-122. As to condemnation by canal companies, see §§ 58-771 to 58-787.

I. GENERAL CONSIDERATION.

This section applies to private or quasi-public corporations.—The marked difference between the provisions of this section, which is applicable to private or quasi-public corporations, and those of S. C. Const., Art. 1, § 17, which is applicable to municipal corporations, is significant as it clearly warrants the inference of an intention that a different rule with regard to the consideration of benefits as compensation must be

applied in the case of taking for a quasi-public purpose from that which may be applied when the taking is for a purely public purpose. Spartanburg v. Belk's Dept. Store, 199 S. C. 458, 20 S. E. (2d) 157 (1942).

And not to municipal corporations.—Bramlett v. City Council, 88 S. C. 110, 70 S. E. 450 (1911); Spartanburg v. Cudd, 132 S. C. 264, 128 S. E. 360 (1925).

Property is not taken except in cases permitted by statute.—When construed with S. C. Const., Art. 1, § 17 and Art. 9, §§ 1, 2, this section means that private property shall not be taken for private use without the consent of the owner, except in cases where this power is conferred upon corporations by the General Assembly. Boyd v. Winnsboro Granite Co., 66 S. C. 433, 45 S. E. 10 (1903).

Drainage laws do not violate section.—The drainage laws, appearing in § 18-5 and in other related sections in Title 18 of the Code, are not in violation of this section. Jackson v. Breeland, 103 S. C. 184, 88 S. E. 128 (1916).

For additional related case, see *Gilmer v. Hunnicutt*, 57 S. C. 166, 35 S. E. 521 (1900).

Cited in *Chesterfield & K. R. Co. v. Johnson*, 58 S. C. 560, 36 S. E. 919 (1900); *South Carolina & G. R. Co. v. American Tel. & Tel. Co.*, 65 S. C. 459, 43 S. E. 970 (1903); *Riley v. Charleston Union Station Co.*, 67 S. C. 84, 45 S. E. 149 (1903); *Southern Power Co. v. Williams*, 85 S. C. 172, 67 S. E. 136 (1910); *South Carolina State Highway Dept. v. Bobotes*, 180 S. C. 183, 185 S. E. 165 (1936).

II. FULL COMPENSATION.

"Full compensation" includes interest on award.—"Full compensation" under this section includes interest on an award where a considerable time elapsed between an award in condemnation proceedings and the taking of the property by the condemnor. *Haig v. Wateree Power Co.*, 119 S. C. 319, 112 S. E. 55 (1922).

And actual value of land is basis for recovery.—In view of this section, the owner of land taken by the county for a highway could recover as damages the actual value of the land taken, as reduced by special benefits only. *Wilson v. Greenville County*, 110 S. C. 321, 96 S. E. 301 (1918).

But compensation need not be paid pending appeal.—A water company instituting condemnation proceedings for erection of dam under §§ 58-771 to 58-787, on depositing with clerk amount of verdict awarded by clerk's jury, had a legal right to enter into possession and proceed with construction of dam, pending an appeal to the circuit court, since money need not actually be paid over to landowners pending an appeal under this section. *Lexington Water Power Co. v. Wingard*, 150 S. C. 418, 148 S. E. 366 (1929).

III. COMPENSATION ASCERTAINED BY JURY.

Legislation need not prescribe mode of jury trial.—The word "shall" as used in this section cannot be presented to mean that there must be legislation, after the adoption of the Constitution, prescribing the method of securing a trial by jury of twelve men in a court of record. *Atlantic Coast Line R. Co. v. South-Bound R. Co.*, 57 S. C. 317, 35 S. E. 553 (1900).

And land may be condemned without creation of tribunal.—An act granting a corporation the right to condemn lands is not unconstitutional in that it does not provide some tribunal to determine any question made by the landowners as to the right of the corporation to condemn. *Riley v.*

Charleston Union Station Co., 71 S. C. 457, 51 S. E. 485 (1905).

Denial of jury trial is doubtful.—It is doubtful, under this section, whether a person who has taken an appeal to the circuit court in the manner prescribed can be denied the right to have the issue of the amount of compensation which should be allowed him "tried by a jury of twelve men, in a court of record, as shall be prescribed by law." *South Carolina Western Ry. v. Ellen*, 95 S. C. 68, 78 S. E. 963 (1913).

And judge may not determine sufficiency of grounds for appeal.—Where the right of trial by jury is provided for on appeal, this section is satisfied, but an act allowing circuit judge to say if grounds of such appeal are sufficient is unconstitutional. *South Carolina Western Ry. v. Ellen*, 95 S. C. 68, 78 S. E. 963 (1913).

Alteration of compensation by judge.—Under this section, if a judge grants a new trial nisi and thereby alters the amount in any way, the compensation is fixed by the judge and not the jury. *Southern Power Co. v. White*, 92 S. C. 219, 75 S. E. 459, dis. op. of Fraser, J. (1912).

IV. APPLICATION TO RAILROADS AND HIGHWAYS.

Condemnation proceedings are constitutional.—The condemnation proceedings provided for in the Code permitting the State Highway Department to condemn private lands do not violate this section of the Constitution. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Within the provisions of this section of the Constitution, property may be condemned by the State or any of its departments or agents. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Incorporation of railroad does not grant presumptive right of way.—In view of this section, a law incorporating a railroad does not give any presumptive grant or right of way through lands over which railroad might be constructed. *Willard v. Southern Ry. Co.*, 158 S. C. 522, 155 S. E. 833 (1930).

And right of way is not acquired by adverse use.—In view of this section, a railroad cannot acquire a right of way by adverse use. *Carolina & N. W. Ry. Co. v. Alexander*, 155 S. C. 91, 151 S. E. 893 (1929).

But statute may condemn land for such purpose.—A statute providing for condemnation of land by railroads for right of way is not in conflict with this section. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

Use of State right of way for telephone line is constitutional.—Inasmuch as the erection and maintenance of poles and wires do not create an additional burden upon the fee of an abutting land owner, § 58-301 of the Code, authorizing a corporation to erect and maintain its telephone line on the land of others within the right of way of the State Highway Department without compensation being paid to the land owners, does not violate this section of the Con-

stitution. *Leppard v. Central Carolina Tel. Co.*, 205 S. C. 1, 30 S. E. (2d) 755 (1944).

Railway failing to comply with statute will be enjoined from building road.—A railroad company, having failed to comply with the statutes of the State in that it had failed to condemn plaintiff's land, will be enjoined from building its road across the railway of plaintiff. *Wilson v. Alderman & Sons Co.*, 69 S. C. 176, 48 S. E. 81 (1904).

§ 21. Provisions not self-executing.

The General Assembly shall enforce the provisions of this Article by appropriate legislation.

Meaning of section.—This section is simply intended to mean that, where necessary, legislation should be enacted. *Becker v. Atlantic Coast Line R. Co.*, 128 S. C. 131, 121 S. E. 476 (1924).

Quoted in South Carolina Western Ry v. Ellen, 95 S. C. 68, 78 S. E. 963 (1913).

Cited in Lauraglen Mills v. Ruff, 52 S. C. 448, 30 S. E. 587 (1898); *Lexington Water Power Co. v. Wingard*, 150 S. C. 418, 148 S. E. 366 (1929).

ARTICLE X.

FINANCE AND TAXATION.

§ 1. Taxation and assessment.

The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes: *Provided, however*, That the General Assembly may impose a capitation tax upon such domestic animals as from their nature and habits are destructive of other property: *And provided, further*, That the General Assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and business. *Provided, Further*, That the General Assembly may provide by law for the assessment of all intangible personal property, including moneys, credits, bank deposits, corporate stocks, and bonds, at its true value for taxation for State, County and municipal purposes or either thereof: *Provided*, That the total rate of taxation imposed thereon shall never exceed one-half of one per centum of the actual value of such intangible property: *Provided, Further*, That such intangible personal property shall not be subject to the three mill levy provided by Section 10, Article 11, of this instrument or to any other general or special tax levy, except such as is especially provided by the General Assembly by the authority and within the limitation of this provision; nor shall such intangible personal property be considered a part of 'taxable property,' as such term is used in this instrument, of the State or any subdivision thereof.

See Const. 1868, Art. IX, § 1.

1930 (36) 1349; 1932 (37) 1126.

- I. General Consideration.
- II. Uniform Assessment.
 - A. In general.
 - B. Application.
- III. Graduated License Tax.
 - A. In general.
 - B. Application.
- IV. Property Exempt from Taxation.
 - A. In general.
 - B. Application.

Cross Reference.

As to taxes as debt due the State and as first lien upon property, see § 65-2701.

I. GENERAL CONSIDERATION.

Construction.—The word “shall,” as used in this section, is intended to be mandatory, but the word “may” is merely advisory. *State v. Reeves*, 112 S. C. 383, 99 S. E. 841 (1919); *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939).

This section relates to property taxation.—*Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

The provisions of this section apply only to ad valorem taxes on property, and do not apply to a license tax. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

And does not apply to unemployment compensation tax.—The tax of the unemployment compensation law of this State is an excise tax, and this section is not applicable. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

Or to annual license tax on gross receipts.—An annual license tax based on gross receipts for the privilege of doing business and maintaining an occupation in a county as a school district tax is an excise tax and not a property tax under this section. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

Assessment within specially created assessment district is not a tax within the meaning of this section of the Constitution. *Sanders v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

And neither is penalty for not clearing streams.—A statute requiring that all landowners in certain counties should, during the months of May and August of each year, remove from the running streams of water on their land all trash, trees, rafts, and timbers therein, and making a violation of such requirement a misdemeanor, is not considered as a measure for taxation and is, therefore, not in conflict with this section. *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900).

Taxes may not be discriminatorily distributed.—The rule of equality and uniform-

ity may be violated by a discriminatory method of distribution of the proceeds of taxation. *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

Failure to tax others is not ground for recovery of tax.—The fact that other taxpayers owning property similar to plaintiff's were not required by the taxing authorities to return it for taxation was not ground for plaintiff's recovery from the county treasurer of taxes collected from her on such property under a statute providing for the recovery of taxes wrongfully collected. *Fuller v. Payne*, 96 S. C. 471, 81 S. E. 176 (1914).

For additional related case, see *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898).

Cited in *Laurens v. Anderson*, 75 S. C. 62, 55 S. E. 136 (1906), in support of the holding that a statute providing that soldiers and sailors of the Confederate States who enlisted from the State of South Carolina should be exempt from any license for carrying on business within the State, is unconstitutional; *New York Life Ins. Co. v. Bradley*, 83 S. C. 418, 65 S. E. 433 (1909), in support of the holding that a tax on the gross income in the State of foreign insurance companies for the preceding year, not being limited to property in the State, is unconstitutional as taking property without due process; *Hoge v. Richmond & D. R. Co.*, 99 U. S. 348, 25 L. Ed. 303 (1878), in support of the holding that the intention of the legislature to exempt the property of corporations from taxation must be clear beyond a reasonable doubt, and cannot be inferred from uncertain phrases or ambiguous terms, and if a doubt arise, it must be solved in favor of the State; *Murph v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907); *Bryant v. Thigpen*, 73 S. C. 223, 51 S. E. 535, 53 S. E. 368 (1906); *Carroll v. York*, 109 S. C. 1, 95 S. E. 121 (1918); *Pineland Club v. Berg*, 110 S. C. 505, 96 S. E. 915 (1918); *Holler v. Rock Hill School District*, 60 S. C. 41, 38 S. E. 220 (1901); *State v. Napier*, 63 S. C. 60, 41 S. E. 13 (1902); *Standard Oil Co. v. Spartanburg*, 66 S. C. 37, 44 S. E. 377 (1903); *Simons-Mayrant Co. v. Query*, 146 S. C. 185, 143 S. E. 808 (1928); *Wingfield v. South Carolina Tax Comm.*, 147 S. C. 116, 144 S. E. 846 (1928); *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937); *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

II. UNIFORM ASSESSMENT.

A. In General.

Uniformity of assessment relates to property taxation.—The requirement of uni-

formity of assessment and rates with respect to taxation relates to property taxation. *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

And must be co-extensive with territory to which tax applies.—This provision does not mean that all counties shall have the same tax levy, but rather that uniformity of taxation must be co-extensive with the territory to which the tax applies. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

Discrimination by assessors does not void statute.—There is a marked distinction between discriminatory classification created by the act making the appropriation and discrimination when such classification arises from the manner in which the provisions of the statute are administered by the fiscal agents in assessing property subject to taxation. Conceding that the classification mentioned in the complaint would have rendered the statute, under which the appropriation is made, null and void if authorized by the legislature, it cannot be successfully contended that it had such effect when adopted by the fiscal agents of the county. *Fuller v. Payne*, 96 S. C. 471, 81 S. E. 176 (1914).

Assessment is needed for ad valorem tax.—Under this section an assessment is essential to constitute liability for an ad valorem tax. *State v. Cheraw & D. R. Co.*, 54 S. C. 564, 32 S. E. 691 (1899).

Income taxes are excepted from requirement of uniform assessment.—A statute providing for a graduated tax on incomes is not in violation of this section, requiring the legislature to prescribe regulations to secure a just valuation for taxation for all property but permitting the General Assembly to provide for a graduated tax on incomes, since taxes on incomes are excepted from the requirement of a uniform and equal rate of assessment and taxation on all property. *Alderman v. Wells*, 85 S. C. 507, 67 S. E. 781 (1910).

Legislature has power to classify.—Tax on dividends and interest received by individuals in excess of \$100 is not unconstitutional for the reason that corporations, estates, and fiduciaries are exempt, for the two are in separate and distinct classes and the legislature has exercised its discretion and power to classify in this respect. *Marshall v. South Carolina Tax Comm.*, 178 S. C. 57, 182 S. E. 96 (1935).

Property may not be taxed twice for same purpose.—Tax on dividends and interest received by individual in excess of \$100 is not unconstitutional in the sense that it violates the rules of equality of tax-

ation as provided by this section of the Constitution, which section prohibits taxation of the same property twice for one purpose. *Marshall v. South Carolina Tax Comm.*, 178 S. C. 57, 182 S. E. 96 (1935).

Assessment is prerequisite to legal tax.—See note to S. C. Const., Art 1, § 6.

But town may not make assessment.—An act authorizing a town to make assessments for taxation is repugnant to this section, providing that the General Assembly "shall provide by law for a uniform and equal rate of assessment," and S. C. Const., Art. 3, § 29, providing that all taxes shall be laid upon the "actual" value of property, since such provisions permit but one assessment which the law requires to be made by State officers. *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846 (1897).

B. Application.

Taxing railroads to pay official's salary is valid.—The act of 1881, § 41, requiring all railroad companies in the State to contribute to the salary and expenses of the State railroad commissioner, is a tax so imposed as to be uniform according to this constitutional provision. *Charlotte, C. & A. R. Co. v. Gibbes*, 27 S. C. 385, 4 S. E. 49 (1887) affirmed in 142 U. S. 386, 12 S. Ct. 255, 35 L. Ed. 1051 (1892). (Editor's note.—This act is no longer in force.)

Requiring townships to pay for bridge preference is constitutional.—An act providing for a road and bridge improvement bond issue by Charleston County, and requiring that the townships requesting road or bridge preference pay one third of cost thereof, is not, in imposing such additional burden, violative of this section providing for uniform taxation, the counties and townships being separate entities in view of S. C. Const., Art. 7, § 11, and the tax being imposed on counties and not on townships. Even if it had been imposed on townships, uniformity in the particular township would have satisfied the Constitution. *Nettles v. Cantwell*, 112 S. C. 24, 99 S. E. 765 (1919).

As is graduated automobile tax.—This section and S. C. Const., Art. 10, § 5, requiring equality and uniformity in taxation, do not forbid the imposition of a license tax on all vehicles owned by residents of a designated county, the amount of which differs for different vehicles. *State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922).

And tax on electric current.—Sections 65-901 and 65-902, which tax electric current produced within the State at the time of generation but relieve such current of a

sales tax, do not violate this section. *South Carolina Power Co. v. South Carolina Tax Comm.*, 52 F. (2d) 515 (1931), affirmed in 286 U. S. 525, 52 S. Ct. 494, 76 L. Ed. 1268 (1932).

And tax to pay principal and interest on bonds.—Act No. 889 of the 1946 Acts [1946 (44) 2612], allowing counties, required to furnish land in construction of new buildings for any State institution, to issue bonds to pay for the land and to levy such taxes as would pay the principal and interest of the bonds, was held not to violate this section of the Constitution. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

And also tax on gasoline stored in State.—Section 2512 of the 1942 Code, providing for tax on gasoline imported into State and stored for over twenty-four hour period, was held not to impose property tax within this constitutional provision requiring uniformity. *Gregg Dyeing Co. v. Query*, 166 S. C. 117, 164 S. E. 588 (1931), affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

Taxation of mixture of taxable and nontaxable gasoline.—Where taxable gasoline is mixed in a tank with nontaxable gasoline to the extent of 30 per cent, this section authorizes the tax commission to tax 30 per cent of all the sales as the gasoline comes from the reservoir, the seller not being allowed to treat sales up to 70 per cent of the contents as nontaxable. *Charleston Oil Co. v. Carter*, 131 S. C. 468, 128 S. E. 8 (1925).

Evidence concerning unequal assessment.—Where railroad property was assessed at 80 per cent of its real value, while other property in the State was only taxed at from 50 to 60 per cent of its value, it is not such evidence of the intention of the board of equalization to violate this section as to warrant the interference of the court. *Chamberlain v. Walter*, 60 F. 788 (1894).

III. GRADUATED LICENSE TAX.

A. In General.

License tax must apply equally to all members of class.—A license or occupation tax is valid if it applies equally and without discrimination to all persons engaged in the same particular business or avocation, or exercising the same privileges; or, if the occupations or privileges and the persons engaged therein are classified for taxation according to reasonable and well-recognized lines of distinction, it does not matter how few the persons are who may be included in a class, so long as all who are or may come into the like situation or cir-

cumstances are embraced in the class. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

And tax may be graduated according to income.—In order to comply with the provision of the Constitution as to graduation, it is not necessary that the rate of the tax shall be graduated: the Constitution is satisfied if the amount of the tax is graduated in accordance with the amount of the income. *Marshall v. South Carolina Tax Comm.*, 178 S. C. 57, 182 S. E. 96 (1935).

The hide buyers' act was held unconstitutional because imposing business license tax which is not graduated. *Martin v. Richardson*, 160 S. C. 370, 158 S. E. 731 (1931).

But legislature may impose nongraduated tax on incomes.—The legislature is not limited and restricted by this section of the Constitution to imposing a graduated tax on incomes. It may subject incomes to a tax which is not graduated if it sees fit to do so. *Marshall v. South Carolina Tax Comm.*, 178 S. C. 57, 182 S. E. 96 (1935).

Or upon occupations and businesses.—This section provides that the General Assembly may impose a graduated license on occupations and businesses, but it does not forbid the imposition of a nongraduated license upon occupations and businesses, and the General Assembly may do anything which the Constitution does not forbid. *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939).

And tax exercising police power need not be graduated.—This section, requiring a uniform and equal rate of taxation and providing that "the General Assembly may provide . . . for a graduated license upon occupations and business", does not require that a license tax on occupations falling within the police power to regulate, such as that of an emigrant agent, should be graduated. *State v. Reeves*, 112 S. C. 383, 99 S. E. 841 (1919).

Taxing different classes on different bases is constitutional.—A city ordinance requiring persons in certain occupations and professions to pay a license or privilege tax, which is uniform as to the members of each class or occupation on which it operates, is not in violation of this section requiring such taxes to be just in that the different classes are not taxed alike. *Hill v. City Council*, 59 S. C. 396, 38 S. E. 11 (1901).

A city ordinance placing a license tax on all persons lending money except banks, which is different from the license tax on banks, does not violate this section. *Cowart v. City Council*, 67 S. C. 35, 45 S. E. 122 (1903).

Classification must be arbitrary for tax to be invalid.—Where plaintiff wishes to show tax unconstitutional because of arbitrary discrimination, the plaintiff must be able to satisfy the court that the classification has its origin in nothing better than whim, fantasy, and tyrannical exercise of arbitrary power before the tax in question will be stricken down. *Marshall v. South Carolina Tax Comm.*, 178 S. C. 57, 182 S. E. 96 (1935).

B. Application.

Pay-As-You-Go Act does not conflict with section.—The Pay-As-You-Go Act, authorizing levy of gasoline tax and automobile license tax, is not in conflict with this section. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926).

Nor does tax on coin-operated devices.—Act No. 346 of the 1939 Acts [1939 (41) 650], which provides for the licensing of coin-operated devices, does not violate this section of the Constitution. *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939).

And tax on tobacco dealers is valid.—An Act [1927 (35) 121] imposing an occupation tax on dealers in tobacco products to be paid by stamps affixed to the package in which the product is retailed, graduated according to the retail price but providing that packages once stamped shall not require further stamps on resales, is not in violation of the rule of uniform taxation imposed by this section. *Doscher v. Query*, 21 F. (2d) 521 (1927).

But tax on storing imported gasoline may contravene section.—Tax on gasoline imported into State and stored for future consumption was held excise tax rather than license tax on mere storing of property, in contravention to that part of this provision allowing license taxes only on occupations and businesses. *Gregg Dyeing Co. v. Query*, 166 S. C. 117, 164 S. E. 588 (1931), affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

IV. PROPERTY EXEMPT FROM TAXATION.

A. In general.

This section and S. C. Const., Art. 10, § 4 are not inconsistent.—Section 4 prohibits any exemption from taxation beyond the actual grounds and building occupied, while this section permits the General Assembly to exempt from taxation "property" of charitable institutions. This power of the General Assembly, referred to in this section,

extends to stocks, bonds, mortgages, and many other classes of property which may be owned by charitable institutions, but as to the real estate, we have the clear prohibition against exemption which is found in the proviso of § 4. *Strong v. Sumter*, 185 S. C. 203, 193 S. E. 649 (1937).

Property not occupied by charities is not exempt.—Any attempt of the General Assembly to exempt from taxation real estate other than the grounds and buildings actually occupied by specified and named charities is unconstitutional and void. *Strong v. Sumter*, 185 S. C. 203, 193 S. E. 649 (1937).

Nor is real estate not occupied by college.—Construing this section and S. C. Const., Art 10, § 4 together, the power of the legislature to exempt property from taxation for educational purposes does not extend so far as to permit it to exempt real estate of a college not occupied by it, as § 4 expressly states that such property shall not be exempted. *Wofford College Trustees v. Spartanburg*, 201 S. C. 315, 23 S. E. (2d) 9 (1942).

But property is exempted for municipal purposes.—This section recognizes the right of the General Assembly to exempt property from taxation for municipal purposes. *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

Municipal purpose is public purpose.—A municipal purpose is defined as a public or governmental purpose, as distinguished from a private purpose. That is, a purpose intended to embrace some of the functions of government, local or general. *Ellerbe v. David*, 193 S. C. 332, 8 S. E. (2d) 518 (1940).

Which embraces county affairs.—Municipal purposes embrace and refer to the governmental affairs of counties. *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

This section, permitting exemption of property for municipal purposes, embraces property exempted for county purposes. *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865 (1930).

The term "municipal purposes," as used in this section of the S. C. Constitution, is the equivalent of or fairly embraces county purposes. That is, an exemption for county purposes is an exemption for municipal purposes if within the scope of the legitimate governmental purposes of a county for which the legislature may provide by law. *Ellerbe v. David*, 193 S. C. 332, 8 S. E. (2d) 518 (1940).

B. Application.

Exempted part of city hall prevents tax sale of whole building.—Where municipal property used exclusively for public purposes is exempt from taxation, the provisions of an act authorizing the sheriff to sell property on which taxes have not been paid, and giving to the purchaser a fee simple title thereto, cannot be enforced against a city hall, part of which is used exclusively for public purposes. *Columbia v. Tindal*, 43 S. C. 547, 22 S. E. 341 (1895).

The Darlington County housing authority is exempt under the provision of this section. *Benjamin v. Housing Authority*, 198 S. C. 79, 15 S. E. (2d) 737 (1941).

Likewise the Columbia housing authority project.—The slum-clearance and low-cost housing project planned by the Columbia housing authority is an exercise of a proper governmental function for a valid public purpose, and this property may be exempt in whole or in part from taxation under the provisions of this section of the Constitution. *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

And bonds issued for city stadium.—Act authorizing city to construct stadium, and exempting from taxation bonds issued therefor, was held not invalid because constituting unfair discrimination against bonds of other business enterprises. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

Or to refund county indebtedness.—Under this section, providing that the General Assembly may exempt such property from taxation as may be exempted by law for municipal and other named purposes, and S. C. Const., Art. 10, § 4, providing that municipal property used exclusively for public purposes shall be exempt from taxation, an act authorizing a county to issue bonds to refund its indebtedness and providing that such bonds shall be exempt from

taxation, is constitutional. *Chester County v. White Bros.*, 70 S. C. 433, 50 S. E. 28 (1905).

Canal company taken over from State may be exempted.—An act exempting a canal company taking over a canal formerly owned and operated by the State from the payment of taxes except for State purposes is not in violation of this section. *Columbia Water Power Co. v. Campbell*, 75 S. C. 34, 54 S. E. 833 (1906).

But not bank funds invested in city bonds.—An act declaring that so much of the capital stock or funds of any bank located within a city as shall be invested in the city's bonds shall be exempt from county taxation, even if construed as extending to the tax to be paid by the shareholders, violates this section providing for a uniform and equal rate of assessment and taxation. *Carolina Nat. Bank v. Spigner*, 106 S. C. 185, 90 S. E. 748 (1916).

Nor property belonging to hail sufferers.—Applying the words "municipal purposes" in their very broadest sense, the exemption of property of hail sufferers from taxes by the legislature in a portion of the county affected is not a public, governmental, or county purpose, but is rather a private purpose, and is, therefore, invalid under this section. *Ellerbe v. David*, 193 S. C. 332, 8 S. E. (2d) 518 (1940).

Nor private property used for textile expositions.—The holding of textile expositions to advance the interests of an industry, however beneficial in the public interests the industry may be, can hardly be said to be an educational, literary, or scientific activity in the usual acceptation of those terms. It would be supplementing the language of the Constitution to hold that benefits of such character enable the corporation to be classified as having educational or scientific purposes. *Textile Hall Corp. v. Hill*, 215 S. C. 262, 54 S. E. (2d) 809 (1949).

§ 2. Expenses of State government.

The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income of the State for such year the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of the ensuing year.

See Const. 1868, Art. IX, § 3.

I. General Consideration.

II. Acts Not Conflicting with Section.

III. Acts Conflicting with Section.

I. GENERAL CONSIDERATION.

General Assembly is empowered to provide for funding of indebtedness incurred

for ordinary and current business of State. *Lott v. Blackwood*, 166 S. C. 58, 164 S. E. 439 (1932).

Section requires yearly expenses to be met.—The leading object of this section is to require that ordinary expenses, embracing the expenditures necessary for maintaining the government, shall be met from year to year and be paid from the annual income and resources of the State, and that public debt shall not be created for the purpose of liquidating that class of expenses. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

The first provision of this section requiring the imposition of a tax to defray the estimated expenses of the ensuing fiscal year is doubtless a matter entirely for the legislature. But when the legislature exercises its power to impose taxes, it is limited by this provision, as judicially construed, to the extent that it cannot make appropriations except for the expenses of the fiscal year for which the revenues are imposed. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

By tax levy equal to appropriations made.—This constitutional provision is designed to prevent the General Assembly from failing to levy taxes equal in amount to the appropriations made. *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

And debts must be settled within year after creation.—While the provisions of the State Constitution give latitude to the General Assembly as to indebtedness for ordinary and current business, yet, by this section, it requires such indebtedness to be wiped out by money received from taxation in the year of, or the next year to, the creation of such indebtedness. *Duncan v. Charleston*, 60 S. C. 532, 39 S. E. 265 (1901).

Notes may be issued to raise money pending tax levy.—When a deficit occurs as the result of appropriations exceeding the annual income, there is no doubt of the power of the legislature to issue notes to raise money pending the levy of a tax for the ensuing year sufficient to pay the deficit. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

And must be paid out of levy for ensuing year.—The power to issue notes implied from the provisions of this section and S. C. Const., Art. 10, § 11 is expressly restricted to the issuance of notes that will be paid out of the tax levy for the ensuing year. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

Continuing appropriations.—The inability of the legislature to make appropriations

except for the expenses of the fiscal year for which the revenues are imposed does not prevent the making of so-called continuing appropriations, such as are made in the legislation providing for the payment of highway certificates of indebtedness out of the annual collections of the gasoline tax and the motor vehicle license tax. These appropriations do not violate the constitutional provision here under consideration, for the obvious reason that they do not constitute lump sum appropriations to cover disbursements extending beyond the ensuing fiscal year, but are in the nature of successive annual appropriations for disbursements of corresponding future years. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

Cited in *State v. Query*, 207 S. C. 500, 37 S. E. (2d) 241 (1946); *Wofford College v. Burnett*, 209 S. C. 92, 39 S. E. (2d) 155 (1946).

II. ACTS NOT CONFLICTING WITH SECTION.

"Pay-As-You-Go" Act does not conflict with section.—The Pay-As-You-Go Act, appropriating a fund for reimbursement to counties advancing money for road construction covering a period of years, is not in conflict with this section forbidding continuing appropriations. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926); *State v. Moor*, 152 S. C. 455, 150 S. E. 269 (1929).

Nor does statute providing graduated tax on incomes.—A statute providing for a graduated tax on incomes is not in violation of this section providing that the General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for a year as attempting to provide for taxation for more than one year, regardless of the estimated expenses of the State for years in which it is collected, since the tax is levied annually and is applied to the expense of the State in the year in which it is collected. *Alderman v. Wells*, 85 S. C. 507, 67 S. E. 781 (1910).

Nor does tax on coin-operated devices.—See note to S. C. Const., Art. 10, § 1.

Nor special license fees for motor vehicle carriers.—An act [1941 (42) 227] providing special license fees for motor vehicle carriers engaged in the business of transporting persons or property for compensation does not violate this section. *State v. Bates*, 198 S. C. 430, 18 S. E. (2d) 346 (1941).

Nor assessments provided by unemployment compensation act.—Alleged violation of this section of the Constitution was not

sustained in *Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941), where it was contended that assessments provided for in §§ 67-171 et seq. of the Code, relative to the unemployment compensation act, were not based on the ensuing annual estimated need but instead violated this section by being insufficient to meet such need and by building up a trust fund which would yield an income to be used in later years.

III. ACTS CONFLICTING WITH SECTION.

Appropriation for two years violates section.—The warehouse act, in so far as it makes appropriation for two years, violates this section providing for an annual tax sufficient only to defray the estimated State expenses for each year and for any existing deficiency. *State v. State Warehouse Comm.*, 92 S. C. 81, 75 S. E. 392 (1912).

As does appropriating gasoline taxes for State deficit.—Act No. 1019 of the 1940 Acts, appropriating two million dollars from the revenues derived from the five cents gasoline tax and the motor vehicle license fees to the payment of the State deficit for a particular year and the general expenses of the State, was held to violate this section of the Constitution. *State v. Osborne*, 195 S. C. 295, 11 S. E. (2d) 260 (1940).

Sections 99 and 100 of the appropriation act for 1939 [1939 (41) 649], providing for appropriation of \$454,000 of current revenues derived from the five cents gasoline tax and the motor vehicle license tax to the general fund of the State to be used for the general expenses of the State for the ensuing year, were held unconstitutional in *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

§ 3. Tax shall be levied in pursuance of law.

No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same; to which object the tax shall be applied.

See Const. 1868, Art. 1X, § 4.

I. General Consideration.

II. Acts Not Violating Section.

III. Acts Violating Section.

I. GENERAL CONSIDERATION.

Section is intended to defeat power of misapplication.—In *Morton, Bliss & Co. v. Comptroller General*, 4 S. C. 430 (1873), the court said: "If it had been intended that the legislature should have any discretion as to the objects to which funds should be applied, this clause would not have been inserted in the Constitution. Its insertion evidences the intent of the Constitution to deprive the legislature of all power of misapplication by an authoritative and imperative appropriation to the specific object set forth in the tax law as the ground of raising the specific tax. If the construction of the constitutional provision stopped short of this, it might entirely defeat the intent, for money might be raised by the legislature under an act strictly conformable to the Constitution as a mere pretext and afterwards applied to any purpose desired by the legislature. The efficient remedy was to stamp at once upon the fund the direction in which it should be disbursed and thus effectually appropriate it. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

Thus revenues for one purpose cannot be applied to another.—Under this constitutional provision, the legislature is without

power to impose a tax for a particular purpose and, before such purpose has been accomplished, change its mind and direct the revenues derived from the particular tax to an entirely different purpose. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

But section does not apply to surplus funds.—This provision is inapplicable where the funds appropriated are surplus funds. *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

"Law" means act of legislature.—This section, providing that no tax shall be levied except in pursuance of a law which shall state the object of the same, means an act of the legislature, unless there is a provision of the Constitution that is self-executing. *Southern Ry. Co. v. Kay*, 62 S. C. 28, 39 S. E. 785 (1901).

Paying back taxes is not "levying."—Where the purposes for which municipal taxes were levied for the past thirteen years have been accomplished, the city council may nevertheless lawfully require the payment of any taxes respondents may owe for those years, since a tax is not ordained or created, that is, "levied," in the sense in which the word is used in this section, by such requirement where such levy has been made by the city council for each current year. *Milster v. Spartanburg*, 68 S. C. 26, 46 S. E. 539 (1903).

Townships not created by statute may levy tax.—Notwithstanding the fact that

there is no statute which created the various townships in Beaufort County, it does not follow that this is a fatal defect to their corporate existence, and their territorial limits are sufficiently defined to support a tax levy on the property lying within their boundaries. *DeLoach v Scheper*, 188 S. C. 21, 198 S. E. 409 (1938).

Applied in *State v. Query*, 207 S. C. 500, 37 S. E. (2d) 241 (1946).

Quoted in *Fuller v. Payne*, 96 S. C. 471, 81 S. E. 176 (1914).

Cited in *State v. State Warehouse Comm.*, 92 S. C. 81, 75 S. E. 392 (1912); *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937).

II. ACTS NOT VIOLATING SECTION.

Act permitting bond issue for State hospital site.—A proposed State hospital for the Medical College of the State of South Carolina is a public building within the meaning of this section, and Act No. 889 of 1946 Acts [1946 (44) 2612], allowing counties required to furnish land in construction of new buildings for any State institution to issue bonds to pay for the land, was held not to violate this section of the Constitution or S. C. Const., Art. 10, § 2. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

Act providing for income tax.—The title of act March 5, 1897, "An act to raise revenue for the support of the State government by the levy and collection of a tax on income," is not in violation of this section since it distinctly states the object to which the tax shall be applied. *Alderman v. Wells*, 85 S. C. 507, 67 S. E. 781 (1910).

Act providing for operation of ferry.—An act providing for an annual levy of two and one-half mills for payment of indebtedness incurred for construction and operation of a ferry by a county does not violate this section prohibiting a tax levy except in pursuance of law distinctly stating its object. *Poulnot v. Cantwell*, 129 S. C. 171, 123 S. E. 631 (1924).

Act providing special motor carrier license fees.—Act applying special license charges to motor vehicle carriers engaged in transporting persons or property for compensation does not violate this section. *State v. Bates*, 198 S. C. 430, 18 S. E. (2d) 346 (1941).

Drainage acts assessing lands to be drained.—Drainage acts providing for an equitable assessment of lands to be drained do not violate S. C. Const., Art. 1, § 6, requiring taxes to be fixed in proportion to

the value of the land in the district, or S. C. Const., Art. 3, § 29, requiring taxes to be made upon actual value, or this section requiring taxes to be levied pursuant to law, or S. C. Const., Art. 10, § 13, providing for one assessment for all taxes, since the drainage acts provide for assessments as distinguished from taxes. *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916).

Statute authorizing issuance of bonds and directing that certain revenues or taxes, levied and collected under existing laws, should be used in payment of such bonds was held not to authorize tax "levy" within this section of the Constitution prohibiting levy of tax except in pursuance of law which should distinctly state object to which tax should be applied. *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935).

Statute providing fees for settlement of estate.—Section 27-319 of the Code, in effect a local inheritance tax law, did not violate this section of the Constitution as the annual supply acts appropriate the fees collected to the payment of county expenditures and debts. *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

Tax on coin-operated devices.—*Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939).

Unemployment compensation act.—*Pickelsimer v. Pratt*, 198 S. C. 225, 17 S. E. (2d) 524 (1941).

III. ACTS VIOLATING SECTION.

Acts appropriating gasoline revenues for State deficit.—*State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940); *State v. Osborne*, 195 S. C. 295, 11 S. E. (2d) 260 (1940).

Act directing offset in operation deficits of school districts.—That portion of an act (§ 2, Act No. 502, 1944 Acts), which directed that an offset be made between all current operation deficits and balances of the several school districts and the difference placed to the credit of the county board fund, subject to the order of the county board of education, was held violative of this section of the Constitution. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

Act providing for expenditure of health commission funds.—So much of Act No. 195 of the 1943 Acts [1943 (43) 289] as provides that "all monies now on hand to the credit of the Township Health Commission of York County, whether on deposit in banks or in the treasury of the said county, shall be used by the said county health department in financing the operation of said

department during the fiscal year 1943-44", is in conflict with this section. *Ward v. Cobb*, 204 S. C. 275, 28 S. E. (2d) 850 (1944).

Bonds issued pursuant to illegal election.—Where an act provides that a proposed issue of bonds in a county must be approved by a majority of the voters of the county at an election to be held under the rules and

regulations governing Democratic primaries, and where the voters at the election were not required to exhibit their registration certificates and tax receipts as required by S. C. Const., Art. 2, §§ 3, 11, and certain Code provisions, the issue was invalid in view of S. C. Const., Art. 1, § 7, and this section. *Dial v. Watts*, 138 S. C. 468, 136 S. E. 891 (1927).

§ 4. Property exempt from taxation.

There shall be exempted from taxation all County, township and municipal property used exclusively for public purposes and not for revenue, and the property of all schools, colleges and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, except where the profits of such institutions are applied to private uses; all public libraries, churches, parsonages and burying grounds; but property of associations and societies, although connected with charitable objects, shall not be exempt from State, County or municipal taxation: *Provided*, That as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, parsonages and burial grounds, although connected with charitable objects.

Provided, further, the General Assembly may by Act exempt from taxation household goods and furniture used in the home of the owner thereof.

1946 (44) 1745; 1947 (45) 136.

See Const. 1868, Art. IX, § 5.

I. General Consideration.

II. Application of Section.

Cross Reference.

As to exemption from taxes, see §§ 65-1522 and 65-1523 of the Code.

I. GENERAL CONSIDERATION.

Section limits powers of legislature.—This constitutional provision is largely a limitation upon the powers of the General Assembly in the matter of granting tax exemptions. It grants exemptions to property used in stated classifications, and proceeds to limit such exemptions to property of associations and societies actually used for the stated purposes and not merely "connected" with the property so used, or involving profits of institutions applied to private uses. *Textile Hall Corp. v. Hill*, 215 S. C. 262, 54 S. E. (2d) 809 (1949).

This section and S. C. Const., Art. 10, § 1 are not inconsistent.—This section prohibits any exemption from taxation beyond the actual grounds and building occupied, while S. C. Const., Art. 10, § 1 permits the General Assembly to exempt from taxation "property" of charitable institutions. This

power of the General Assembly, referred to in S. C. Const., Art. 10, § 1, extends to stocks, bonds, mortgages, and many other classes of property which may be owned by charitable institutions, but as to the real estate, there is the clear prohibition against exemption which is found in the proviso of this section. *Strong v. Sumter*, 185 S. C. 203, 193 S. E. 649 (1937).

"This exemption" does not mean exemption afforded by "this section."—The meaning of the word "this" is not confined to this section. The Constitution does not say "this section"; it says "this exemption". "This exemption" does not mean "this exemption provided for by this section", but it means "this exemption of College real property authorized by the Constitution". *Wofford College Trustees v. Spartanburg*, 201 S. C. 315, 23 S. E. (2d) 9 (1942).

All property is taxable except that exempted.—All the property in the State is liable to be taxed, except such as is specially exempt by this section. *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846 (1897).

And exemptions of private property are strictly construed because in such cases taxation is the rule and exemption the excep-

tion. *Myrtle Beach v. Holliday*, 203 S. C. 25, 26 S. E. (2d) 12 (1943).

But not exemptions of municipal property.—Exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. Municipal corporations are merely agencies of the State for governmental purposes, and it has never been the policy of this State to tax its own agencies or instrumentalities of government. *Myrtle Beach v. Holliday*, 203 S. C. 25, 26 S. E. (2d) 12 (1943).

Unless it is used for private purposes.—This section was not intended to exempt public properties used for private purposes in addition to their public uses. *People's Nat. Bank v. Greenville County*, 174 S. C. 256, 177 S. E. 369 (1934).

Exemptions may not be claimed against excise taxes.—As the provisions of this Article of the S. C. Constitution deal with ad valorem taxes on property (and in addition with license taxes on occupations and businesses, income taxes, and other items expressly named therein), it follows that the exemptions provided for in this Article apply only to the kinds of taxes herein dealt with and regulated. As neither this provision of the Constitution, nor any other in any way refer to excise taxes, the exemptions herein allowed cannot be claimed against such taxes. *Greenville v. Query*, 166 S. C. 281, 164 S. E. 844 (1930), affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

Or where real estate is not occupied by college.—Construing this section and S. C. Const., Art. 10, § 1 together, the power of the legislature to exempt property from taxation for educational purposes does not extend so far as to permit it to exempt real estate of a college which is not occupied by it, since this section expressly states that such property shall not be exempted. *Wofford College Trustees v. Spartanburg*, 201 S. C. 315, 23 S. E. (2d) 9 (1942).

Or where real estate is not occupied by charity.—Any attempt of the General Assembly to exempt from taxation real estate other than the grounds and buildings actually occupied by specified and named charities is unconstitutional and void. *Strong v. Sumter*, 185 S. C. 203, 193 S. E. 649 (1937).

Legislature decides if act is for public purpose.—Under the division of the powers provided in the State Constitution, the question of whether an act is for a public purpose is primarily one for the legislature, and

the court will not interfere with the legislative finding unless the determination of that body is clearly wrong. *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

And it is not required to tax business operated by municipalities.—This constitutional provision, however, merely requires that the legislature exempt from taxation the property mentioned therein. There would seem to be nothing in it which would require the legislature to impose an excise tax on the business operated by municipalities. *South Carolina Power So. v. South Carolina Tax Comm.*, 52 F. (2d) 515 (1931), affirmed in 286 U. S. 525, 52 S. Ct. 494, 76 L. Ed. 1268 (1932).

Taxes are not exigible where State acquires property within year.—Where taxes are assessed against property for the year in which such property is acquired by a political subdivision of the State and by such agency used for public purposes, the taxes so assessed in favor of the State then cease to be exigible. *Myrtle Beach v. Holliday*, 203 S. C. 25, 26 S. E. (2d) 12 (1943).

Unincorporated churches may own and convey land.—This section impliedly authorizes unincorporated churches to receive, own, convey, and pass good title to land. *Jeffrey v. Ehrhardt*, 210 S. C. 519, 43 S. E. (2d) 483 (1947).

Applied in *Epworth Orphanage v. Wilson*, 185 S. C. 243, 193 S. E. 644 (1937); *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

Cited in *Fooshe v. McDonald*, 82 S. C. 22, 63 S. E. 3 (1908); *McCreight v. Camden*, 49 S. C. 78, 26 S. E. 984 (1897); *McCullough v. Brown*, 41 S. C. 220, 19 S. E. 458 (1894).

II. APPLICATION OF SECTION.

Parsonage rented by minister is exempt.—Under this section, providing that churches and parsonages shall be exempt from taxation, a parsonage belonging to a church which the pastor rents, and collects and applies the rent to his salary or the rent of another residence, does not lose its character as a parsonage and is exempt from taxation. *Protestant Episcopal Church v. Prioleau*, 63 S. C. 70, 40 S. E. 1026 (1902).

Likewise property of Columbia housing authority.—The slum-clearance and low-cost housing project planned by the Columbia housing authority is an exercise of a proper governmental function for a valid public purpose. This property may be exempt in whole or in part from taxation under the provisions of this section of the Constitution. *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

And of Darlington county housing authority.—Since the property of the Darlington county housing authority is public property and since the authority is an instrumentality of Darlington County, operated exclusively for the benefit of the public and not for revenue, the property is exempt from taxation under the provisions of this section. Benjamin v. Housing Authority, 198 S. C. 79, 15 S. E. (2d) 737 (1941).

And bonds to refund county indebtedness.—Chester County v. White Bros., 70 S. C. 433, 50 S. E. 28 (1905).

But excise tax may be imposed on municipal gasoline.—An excise tax imposed on storage of gasoline was held not violative of this constitutional provision exempting municipal "property" from taxation, where gasoline was imported and stored by cities for municipal purposes. Greenville v. Query, 166 S. C. 281, 164 S. E. 844 (1930),

affirmed in 286 U. S. 472, 52 S. Ct. 631, 76 L. Ed. 1232 (1932).

And private property used for textile expositions may be taxed.—When corporation was organized and operated primarily for the purpose of holding biannual expositions dealing with the textile industry, and the greater part of the income of the corporation comes from such expositions, there is no exemption under this section. Textile Hall Corp. v. Hill, 215 S. C. 262, 54 S. E. (2d) 809 (1949).

Church is not exempt from paving assessment.—Exemption of churches from taxation by direct provision of this section does not include exemption from assessment for pavement in front of church property, for an assessment is not a tax within the meaning of the Constitution. Wesley M. E. Church v. Columbia, 105 S. C. 303, 89 S. E. 641 (1916).

§ 5. Taxes may be levied for corporate purposes; shares of stockholders; limit of bonded debt.

The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. All shares of stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town or incorporated village, where such bank is located, and not elsewhere: *Provided*, That the words "true value in money" as used in line 12 [line 12 of the original and line 7 as herein printed] of this Section shall be so construed as to mean and include all surplus or extra moneys, capital, and every species of personal property of value owned or in possession of any such bank: *Provided*, A like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. And the General Assembly shall require that all the property, except that herein permitted to be exempted within the limits of municipal corporations, shall be taxed for corporate purposes and for the payment of debts contracted under authority of law. The bonded debt of any county, township, school district, municipal corporation or political division or subdivision of this State shall never exceed eight per centum of the assessed value of all the taxable property therein. And no county, township, municipal corporation or other political division of this State shall hereafter be authorized to increase its bonded indebtedness if at the time of any proposed increase thereof the aggregate amount of its already existing bonded debt amounts to eight per centum of the value of all taxable property therein as valued for State taxation. And wherever there shall be several political divisions or municipal corporations covering or extending over the territory, or portions thereof, possessing a power to levy a tax or contract a debt, then each of such political divisions or municipal corporations shall so exercise

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its power to increase its debt under the foregoing eight per cent limitation that the aggregate debt over and upon any territory of this State shall never exceed fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State: *Provided*, That nothing herein shall prevent the issue of bonds for the purpose of paying or refunding any valid municipal debt heretofore contracted in excess of eight per centum of the assessed value of all the taxable property therein.

See Const. 1868, Art. IX, § 8.

Provided, further, That the limitations imposed by this section shall not apply to the school district of the town of Laurens, said school district being hereby expressly authorized to vote bonds to an amount not exceeding twelve (12) per cent of the value of all taxable property in such territory as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district, as provided in the Constitution, upon the question of bonded indebtedness.

1920 (31) 1731; 1921 (32) 16.

Provided, further, That the limitations imposed by this section shall not apply to bonded or other indebtedness of the Santee Bridge District comprising the territory of the Counties of Charleston, Berkeley and Williamsburg, and such indebtedness shall not be considered in determining the power of any other municipal corporation or political division or subdivision to incur debt.

1920 (31) 1724; 1921 (32) 27.

Provided, further, That the limitations imposed by this section shall not apply to School District Hunter No. 5, of Laurens County, the State of South Carolina, said school district being hereby authorized to issue bonds in an amount not to exceed twelve (12) per cent of the value of all taxable property in the territory embraced in said school district as valued or assessed for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district as provided in the Constitution upon the question of bonded indebtedness.

1920 (31) 1729; 1921 (32) 37.

Provided, further, That the limitations imposed by this Section shall not apply to Laurens County, such county being hereby expressly authorized to vote bonds to an amount not exceeding twenty per cent of the value of all taxable property within the limits of Laurens County as valued for taxation by the State; the proceeds of such bonds to be applied to the construction or maintenance of roads, bridges and public buildings within said county: *Provided, further*, That this limitation shall not be construed to affect or limit power of other political divisions or municipal corporations covering or extending over the territory of Laurens County or portions thereof, possessing a power to levy or contract a debt as now provided by law, or as may hereafter be provided by law.

1920 (31) 1730; 1921 (32) 47.

Provided, further, That the limitations imposed by this Section shall not apply to Lancaster School District within the County of Lancaster and embracing the Town of Lancaster, such school district being hereby expressly authorized to vote bonds to an amount not exceeding one hundred fifty thousand (\$150,000.00) dollars in excess of the bonds already issued and authorized. The proceeds of such bonds to be applied solely to the purchase of additional real estate for school purposes, the erection, maintenance, improvements and equipment of school buildings in said school district under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district, as provided in the Constitution upon the question of bonded indebtedness.

1920 (31) 1733; 1921 (32) 83.

That the limitations imposed in Section 7, of Article VIII, and in Sections 5 and 6 of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the County of Richland, when the proceeds of any bonds issued by said County are applied exclusively to the purpose of erection, improvement and maintenance of a public hospital and court house or in payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of said county, as provided by law.

1920 (31) 1721; 1921 (32) 156.

Provided, That the limitations imposed by Section 5, Article X, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the Counties of Allendale and McCormick, when the proceeds of such bonds are applied exclusively for the building of a court house or jail, or for building, improving, or repairing public highways and bridges, nor shall the limitations of this Constitution, as contained in said Section 5, Article X, apply to any township, school district, municipal corporation or other political subdivision of either of the said counties, when the proceeds of such bonds are used for the purposes hereinabove named: *Provided,* The question of incurring such bonded indebtedness is submitted to the qualified electors of the said counties, respectively, and a majority of those voting in such election or elections shall vote in favor thereof; but neither of the said Counties of Allendale or McCormick, nor any township, school district, municipal corporation or other political subdivision of either of said counties, shall be authorized to incur a bonded indebtedness exceeding fifteen (15) per centum of the assessed value of all the taxable property therein.

1920 (31) 1734; 1921 (32) 143.

The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. All shares of the stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this

State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town or incorporated village, where such bank is located, and not elsewhere: *Provided*, That the words "true value in money," as used in line 12 [line 12 of the original and line 7 as herein printed] of this Section shall be so construed as to mean and include all surplus or extra moneys, capital and every species of personal property of value owned or in possession of any such bank: *Provided*, A like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. And the General Assembly shall require that all the property, except that herein permitted to be exempted within the limits of municipal corporations, shall be taxed for corporate purposes and for the payment of debts contracted under authority of law. The bonded debt of any county, township, school district, municipal corporation or political division or subdivision of this State shall never exceed eight per centum of the assessed value of all the taxable property therein. And no county, township, municipal corporation or other political division of this State shall hereafter be authorized to increase its bonded indebtedness if at the time of any proposed increase thereof the aggregate amount of its already existing bonded debt amounts to eight per centum of the value of all taxable property therein as ascertained by the valuation for State taxation. And wherever there shall be several political divisions or municipal corporations covering or extending over the same territory, or portions thereof, possessing a power to levy a tax or contract a debt, then each of such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing eight per centum limitation that the aggregate debt over and upon any territory of the State shall never exceed fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State: *Provided*, That nothing herein shall prevent the issue of bonds for the purpose of paying or refunding any valid municipal debt heretofore contracted in excess of eight per centum of the assessed value of all taxable property therein: *Provided*, That the limitations imposed by Paragraph 5, Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the County of Sumter.

1920 (31) 1726; 1921 (32) 273.

Provided, That the limitations imposed in Section 7, Article VIII, and by Section 5, of Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the City of Beaufort, when the proceeds of any bonds issued by said city are applied exclusively to the purchase, erection, improvements and maintenance of streets and sidewalks where the abutting property owners are assessed as much as one-half the cost thereof, or for the purchase, construction and maintenance of waterworks, lighting plants, gas plants, sewerage system or for the payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1922 (32) 1329; 1923 (33) 1.

Provided, That the limitations imposed in Paragraph 5, Article X, of the Constitution of the State of South Carolina shall not apply to the bonded debt of Beaufort.

1922 (32) 1330; 1923 (33) 2.

Provided, further, That the limitations imposed by this Section shall not apply to School District No. 10, Cherokee County, such school district being hereby expressly authorized to vote bonds to an amount not exceeding \$300,000.00, the proceeds of such bonds to be applied solely for school purposes in said district, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district, as provided in the Constitution upon the question of bonded indebtedness.

1922 (32) 1354; 1923 (33) 3, 4.

Provided, That the limitations imposed by this Section shall not apply to the School District of the City of Florence, in Florence County, South Carolina, such school district being hereby expressly authorized to vote bonds to an amount not to exceed twenty per cent of the value of all taxable property in the territory embraced in said school district, as valued or assessed for taxation by the State, the proceeds of such bonds to be applied solely to the erection, equipment and maintenance of schools and school buildings in said district, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is to be submitted to the qualified electors of said school district, as provided in the Constitution, upon the question of bonded indebtedness.

1922 (32) 1398; 1923 (33) 7.

Provided, further, That the limitations imposed by this Section shall not apply to Due West School District No. 38, within the County of Abbeville and embracing the Town of Due West, such school district being hereby expressly authorized to vote bonds to an amount not exceeding seventy-five thousand (\$75,000.00) dollars, in excess of the bonds already issued and authorized, the proceeds of such bonds to be applied solely to the purchase of additional real estate for school purposes, the erection, maintenance, improvement and equipment of school buildings in said school district, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district, as provided in the Constitution, upon the question of bonded indebtedness.

1922 (32) 1291; 1923 (33) 8.

Provided, further, That the limitations imposed by these Sections [Art. 10, §§ 5 and 6] shall not apply to the Township of Christ Church Parish, in Charleston County, contained within the following area: Northeast by Awendaw Creek; southeast by the Atlantic Ocean and the Township of Sullivan's Island; southwest by Charleston Harbor, and northwest by the Wando River and the Berkeley County line, thus containing within the said area the Town of Mount Pleasant, S. C., such township being hereby expressly authorized to vote bonds

to an amount not to exceed one hundred and fifty thousand (\$150,000.00) dollars, the proceeds of such bonds to be applied solely to the erection and maintenance of a railroad from a point in Berkeley County, in and through the Township of Christ Church Parish, in and through the town of Mount Pleasant, on Charleston Harbor, under such restrictions and limitations as the General Assembly may prescribe, and when the question of incurring said indebtedness is submitted to the qualified electors of said township, as provided in the Constitution, upon the question of bonded indebtedness.

1922 (32) 1344; 1923 (33) 48.

Provided, That the limitations imposed in Section 7, Article VIII, and by Section 5, Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the City of Spartanburg when the proceeds of any bonds issued by said city are applied exclusively to the purchase, erection, improvements and maintenance of streets and sidewalks, or for the purchase, construction and maintenance of waterworks, lighting plants, gas plants, sewerage systems, or for the payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of the said municipality as provided by law: *Provided*, That the amount of bonds issued hereunder shall not exceed fifteen per cent of the assessed valuation of property, in the City of Spartanburg.

1922 (32) 1568; 1923 (33) 129.

Provided, That the limitations imposed in Paragraph 5, Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness of the County of Beaufort, or of townships, school districts or other political subdivisions of said county.

1922 (32) 1330; 1923 (33) 2; 1924 (33) 1055.

Provided, That the limitations imposed by these Sections [Art. 10, §§ 5 and 6] shall not apply to St. James Santee Township in Charleston County contained within the following area: north by Berkeley County line; east by Santee River; south by Atlantic Ocean and west by Awensdaw Creek.

Such township being hereby expressly authorized to vote bonds to an amount not to exceed one hundred and twenty-five thousand (\$125,000.00) dollars, the proceeds of such bonds to be applied solely to the erection and maintenance of a railroad from a point in Berkeley County in and through the Township of St. James Santee, in and through the unincorporated village of McClellanville on Jeremy Creek, under such restrictions and limitations as the General Assembly may prescribe and when the question of incurring such indebtedness is submitted to the qualified electors of said township as provided in the Constitution upon the question of bonded indebtedness.

1925 (34) 613; 1927 (35) 194.

Provided, That the limitation imposed by Section 7, Article VIII, and Section 5 of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness of the Town of Conway, Horry County, when the proceeds of such bonds are applied exclusively for the

building, erecting, establishing, repairing, extending or maintaining sidewalks, streets, street lighting, waterworks, lighting plants, storm sewers, drainage, sewerage system, fire departments, or public buildings for such town, or for any or either of such purposes, or for the payment of any indebtedness already incurred for any or either of such purposes; when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the Town Council of said town, and a majority of those voting in such election or elections shall vote in favor thereof.

1926 (34) 1367; 1927 (35) 46.

Provided, That the limitations imposed under Section 7 of Article VIII and Section 5 of Article X of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred by the Town of Lancaster when the proceeds of any bonds issued by the said town are applied exclusively to the purchase, construction and maintenance of waterworks, construction and extension of the sewerage system, and for the purchase, construction and maintenance of streets and sidewalks where the abutting property owners are assessed as much as one-half the cost thereof, or for the payment of past indebtedness, and when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1926 (34) 1378; 1927 (35) 59.

Provided, further, That the limitations imposed by this Section of the Constitution shall not apply to bonded or other indebtedness of the Town of McColl incurred for street or sidewalk improvements, in cases where corporate authorities of said town shall have levied or shall have determined to levy special assessments on abutting property for the purpose of paying for the improvements (whether or not including improvements at street intersections); and such indebtedness of the Town of McColl shall not be considered in determining the amount of indebtedness permitted to be incurred by said town for other purposes, or by any other political or civil division or subdivision of the State for any purpose, and shall not exceed fifteen (15) mills of the assessed valuation of the property in said town.

1926 (34) 1371; 1927 (35) 65.

Provided, further, That the restrictions and limitations imposed by this Section upon the purposes and the amounts of bonded debt and taxes shall not apply to Rock Hill School District No. 12, York County, said School District being hereby expressly authorized to issue bonds to an amount not exceeding eight hundred thousand (\$800,000.00) dollars of which not exceeding three hundred thousand (\$300,000.00) dollars of bonds is hereby authorized to be issued for the purpose of constructing any building or buildings in said school district to be leased or sold by said school district to any educational institution or institutions in said school district, and said school district may levy taxes for the payment of said bonds: *Provided*, That a proposition or propositions to issue such bonds shall first be submitted

to and approved by the qualified electors of said school district in such manner as may be prescribed by the General Assembly.

1926 (34) 1385; 1927 (35) 71.

Provided, further, That the limitations imposed by this Section shall not apply to Heath Springs School District No. 38 of Lancaster County, said school district being hereby authorized to issue additional bond in an amount not exceeding thirty thousand (\$30,000.00) dollars, and that the question of incurring such indebtedness be submitted to the qualified electors of said school district as provided in the Constitution upon the question of bonded indebtedness.

1926 (34) 1383; 1927 (35) 75.

Provided, further, That the limitations imposed by this section shall not apply to Bishopville School District No. 1, of Lee County, said school district being hereby authorized to vote bonds to an amount not to exceed fifteen (15) per cent of the value of all taxable property in the territory embraced in said school district as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district as provided in the Constitution upon the question of bonded indebtedness.

1926 (34) 1384; 1927 (35) 87.

Provided, That the limitations imposed by Section 7, Article VIII, and Section 5, Article X, of the Constitution of the State of South Carolina, shall not apply to the Town of Dillon, when the proceeds of such bonds are applied exclusively for the building, establishing, erecting, repairing, extending, improving, paving or maintaining of sidewalks, streets, fire department, city or town hall and guard house for such town, or for any or either of such purposes, or for payment of any indebtedness already incurred for any or either of such purposes; and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said municipality by the Town Council of said town, and a majority of those voting in such election or elections shall vote in favor thereof.

1926 (34) 1369; 1927 (35) 111.

Provided, That the limitations imposed by this Section of the Constitution shall not apply to bonded or other indebtedness of the Town of Clio, said town being hereby expressly authorized to vote bonds to an amount not exceeding sixteen (16) per cent of the value of all taxable property within the corporate limits of said town as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said town as provided in the Constitution upon the question of bonded indebtedness.

1926 (34) 1372; 1927 (35) 185.

Provided, That the limitations imposed in Section 7, Article 8, and Section 5, Article 10, of the Constitution of the State of South Carolina shall not apply

to the Town of Mullins, in the County of Marion to the extent herein provided when the proceeds of any bond or other obligation issued by said town are applied to past indebtedness, street paving and other improvements of said streets; but the town of Mullins is hereby authorized to issue bonds or other obligations, for past indebtedness, street paving and other improvements of streets to an amount not exceeding seventy thousand (\$70,000.00) dollars in addition to the limitations now imposed by the Constitution.

1926 (34) 1374; 1927 (35) 303.

Provided, further, That the limitations imposed by this Section shall not apply to Clio School District No. 9, said school district being hereby expressly authorized to vote bonds to an amount not exceeding sixteen per cent of the value of all taxable property in such territory as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district as provided in the Constitution upon the question of bonded indebtedness.

1936 (34) 1380; 1927 (35) 177.

Provided, That all limitations imposed by Section 7 of Article 8 and Section 5 of Article 10 of the Constitution of the State of South Carolina shall not apply to bonded indebtedness incurred by the City of Union when the proceeds of said bonds issued by said city are applied exclusively to pay past indebtedness.

1926 (34) 1373; 1927 (35) 207.

That the limitations imposed by this Section shall not apply to the school district known as Marlboro Graded School District No. 10, said District being hereby expressly authorized to vote bonds to an amount not exceeding sixteen per cent of the value of all taxable property in such territory as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe and where the question of incurring such indebtedness is submitted to the qualified electors of said School District, as provided in the Constitution upon the question of bonded indebtedness.

1926 (34) 1370; 1927 (35) 291.

Provided, That the limitations imposed by Article VIII, Section 7, and Article X, Section 5, of the Constitution shall not apply to the bonded indebtedness incurred by the City of Charleston where the proceeds of said bonds are applied solely to the replacement of funds heretofore used for purposes other than those for which the taxes represented thereby were levied and collected, or to the funding or payment of any indebtedness incurred before March 15, 1926, for municipal purposes, or to the laying, extension, repair and maintenance of drains, or to the costs of street improvement; and the General Assembly shall have power by special Act or Acts to authorize said city to issue bonds for all or any of the purposes aforesaid, without regard to limitations or restrictions and for the issuance of such bonds it shall not be necessary, unless the Act authorizing such issue shall require it, to submit the question of the creation of such debt to the freeholders and qualified electors of said

city and for a prerequisite for holding such election no petition from the freeholders of said city shall be necessary, any provisions in Section 13 of Article II of the Constitution to the contrary notwithstanding.

1926 (34) 1376; 1927 (35) 33.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to Spartanburg County, and that Spartanburg County may incur bonded indebtedness to an amount not exceeding fifteen per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness, now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said county.

1926 (34) 1382; 1927 (35) 41.

Provided, That the limitation herein provided as to the amount of bonded debt of any county shall not apply to the County of York, when the proceeds of such bonds are to be used for highway and bridge construction, in which case it shall never exceed eighteen per cent of the assessed value of all taxable property in said county.

1925 (34) 607; 1927 (35) 50.

Provided, further, That the limitations as proposed by this Section shall not apply to School District No. 29, of Lexington County, South Carolina, said school district being hereby authorized to issue additional bonds in an amount not exceeding fifteen (15%) per cent of the valuation of the assessable property in said school district, and that the question of incurring said indebtedness be submitted to the qualified electors of said school district as provided in the Constitution upon the question of bonded indebtedness.

1928 (35) 1701; 1929 (36) 4.

Provided, That the limitations imposed by Article VIII, Section 7, and Article X, Section 5, of the Constitution of the State of South Carolina, shall not apply to the bonded indebtedness incurred or to be incurred by the City of Walterboro where the proceeds of such bonds are applied exclusively to the payment of expenses and liabilities incurred or to be incurred for the purchasing, repairing, enlarging, or improving of city or town hall, or public park, or parks, and grounds therefor; public market and guard house; purchasing, enlarging, extending, improving and establishing electric light and power plants, waterworks or sewerage systems; erecting, repairing, enlarging, improving, or altering school buildings, fire department and fire protection purposes; improvement of streets and sidewalks and drainage therefor, or other corporate purposes for the said City of Walterboro, or for any or either of such purposes. And when the question of incurring such bonded indebtedness is submitted to the qualified electors of the City of Walterboro by the City Council of the said City of Walterboro, and the majority of those voting in such election, or elections, shall vote in favor thereof; and the said City of Walterboro shall have power to issue bonds for any or all of the purposes aforesaid in the manner above provided, without regard to limitations or restrictions; and no petition from the freeholders of the said City shall be necessary as a pre-

requisite for holding such election, or elections, any provisions in Section 13, of Article II, of the Constitution to the contrary notwithstanding.

1928 (35) 1688; 1929 (36) 280.

Provided, further, That the limitations imposed by this Section shall not apply to the school district of the City of Greenville, said school district being hereby expressly authorized to vote bonds to an amount not exceeding twelve per centum of the value of all taxable property in such territory as valued for taxation by the State under such restriction limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district, as provided in the Constitution upon the question of bonded indebtedness.

1928 (35) 1704; 1929 (36) 12.

Provided, further, That the limitations imposed by this Section shall not apply to Campobello School District No. 49, said school district being hereby expressly authorized to vote bonds to an amount not exceeding fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said school district as provided in the Constitution upon the question of bonded indebtedness.

1928 (35) 1695; 1929 (36) 145.

Section 1. That the limitations imposed under Section 7, Article VIII, and Section 5, Article X, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the Town of Kershaw, in the Counties of Lancaster and Kershaw, when the proceeds of any bonds issued by the said town are applied exclusively to the purchase, construction and maintenance of waterworks, sewerage system, and for the purchase, construction, and maintenance of streets and sidewalks where the abutting property owners are assessed as much as one-half the cost thereof.

1928 (35) 1699; 1929 (36) 148.

Section 1. That the limitations imposed under Section 7 of Article 8, and Section 5 of Article 10, of the Constitution of the State of South Carolina shall not apply to the bonded indebtedness incurred by the Town of Heath Springs, in the County of Lancaster, when the proceeds of any bonds issued by the said town are applied exclusively to the purchase, construction and maintenance of waterworks, purchase, construction and maintenance of a sewerage system, and for the purchase, construction and maintenance of streets and sidewalks where abutting property is assessed as much as one-half the cost thereof, or, for the payment of past indebtedness, when the question of incurring such indebtedness is submitted to the qualified electors of said municipality as provided by law.

1928 (35) 1690; 1929 (36) 149.

Provided, further, That the limitations imposed by this Section and by Section 7 of Article VIII, of the Constitution, and by any amendments thereof,

shall not apply to the bonded indebtedness incurred by the City of Anderson, but, in addition to the powers now possessed, said City of Anderson may increase its bonded indebtedness in the manner provided in said Section 7 of Article VIII, to an amount not exceeding thirty (30%) per cent of the value of the taxable property therein, where the proceeds of said bonds are applied to the payment of any indebtedness incurred by said city before January 1, 1929, or to expenses and liabilities incurred or to be incurred in the improvements of streets, sidewalks or other public places, or to the purchase, establishment, maintenance, operation or increase of a city cemetery or city market or public parks: *Provided, however,* That nothing herein contained shall be construed to limit the operation of the amendment to Section 7 of Article VIII, of the Constitution approved February 3, 1911, by which the limitations imposed by said Section 7 of Article VIII, and by said Section 5 of Article X, of the Constitution were removed from any municipal corporation when the proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant, and when the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution upon the question of other bonded indebtedness, and said amendment of February 3, 1911, shall remain of full force and effect and said City of Anderson shall have the full benefit thereof.

1928 (35) 1702; 1929 (36) 260.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to Landrum School District and that the Landrum School District may incur bonded indebtedness to an amount not exceeding fifteen per centum of the assessed value of all taxable property therein without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation or political subdivisions located wholly or partly within said county.

1928 (35) 1694; 1929 (36) 280.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to Clarendon County, and that Clarendon County may incur bonded indebtedness to an amount not exceeding twenty (20) per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said County.

1930 (36) 1213; 1931 (37) 102.

All notes and bonds heretofore issued by Newberry County and now outstanding and unpaid are hereby validated; and the General Assembly may authorize the said County to issue its bonds for the purpose of paying, funding or refunding the said outstanding notes or bonds, notwithstanding any limitation or restriction contained in this Constitution.

1930 (36) 1091; 1931 (37) 103.

All notes and bonds heretofore issued by Chesterfield County and now outstanding and unpaid are hereby validated, and the General Assembly may authorize the said County to issue its bonds for the purpose of paying, funding or refunding the said outstanding notes or bonds, notwithstanding any limitations or restrictions contained in this Constitution.

1930 (36) 1211; 1931 (37) 104.

All notes and bonds heretofore issued by Dorchester County and now outstanding and unpaid are hereby validated; and the General Assembly may authorize the said County to issue its bonds for the purpose of paying, funding, or refunding the said outstanding notes or bonds, notwithstanding any limitations or restriction contained in this Constitution.

1930 (36) 1210; 1931 (37) 108.

Provided, further, That the limitations imposed by this Section [Art. 8, § 7] and by Section 5 of Article X of the Constitution shall not apply to any bonded indebtedness incurred by the City of Columbia, where the bonded indebtedness is authorized to be incurred for the purpose of enlarging and maintaining its fire department or for purchase, building and maintenance of fire stations, fire alarm systems or fire equipment, or for any one or more of said purposes, and when the question of incurring such bonded indebtedness is submitted to the qualified electors of said City at an election or elections to be called by the City Council of said City, and a majority of those voting thereon shall vote in favor thereof; and the General Assembly need not prescribe as a condition precedent to the holding of any such election a petition from the freeholders as provided in Section 13 of Article II of the Constitution.

1930 (36) 1207; 1931 (37) 110.

Provided, further, That the limitations imposed by this Section [Art. 8, § 7] and by Section 5, Article X, of the Constitution, and by any amendments thereof, shall not apply to the bonded indebtedness incurred by the City of Anderson, but, in addition to the powers now possessed, said City of Anderson may increase its bonded indebtedness in the manner provided in said Section 7, of Article VIII, to an amount not exceeding thirty per cent of the value of the taxable property therein, where the proceeds of said bonds are applied to the payment of any indebtedness of said City heretofore or hereafter incurred or to be incurred by said City, or to expenses and liabilities incurred or to be incurred in the improvements of streets, sidewalks or other public places, or to the purchase, establishment, maintenance, operation or increase of a city cemetery or city market or public parks, or to expenses, indebtedness or liabilities heretofore or hereafter incurred or to be incurred by said City in the purchase, establishment, maintenance or operation of an airport or airports located or to be located in Anderson County, South Carolina, or to any other municipal purpose: *Provided, however,* That nothing herein contained shall be construed to limit the operation of the amendment to Section 7 of Article VIII of the Constitution, approved February 3, 1911, by which the limitations imposed by said Section 7 of Article VIII, and by said Section 5 of Article X of the Constitution were removed from any municipal corporation when the

proceeds of the bonds are applied solely and exclusively for the purchase, establishment and maintenance of a waterworks plant, or sewerage system, or lighting plant and when the question of incurring such indebtedness is submitted to the freeholder and qualified voters of such municipality, as provided in the Constitution upon the question of other bonded indebtedness, and said amendment of February 3, 1911, shall remain of full force and effect and said City of Anderson shall have the full benefit thereof.

1930 (36) 1279; 1931 (37) 157. (See also Art. VIII, § 7.)

All notes and bonds heretofore issued by Dorchester County and now outstanding and unpaid are hereby validated; and the General Assembly may authorize the said County to issue its bonds for the purpose of paying, funding, or refunding the said outstanding notes or bonds, or any of them, notwithstanding any limitations or restriction contained in this Constitution.

1932 (37) 1159; 1933 (38) 590.

Provided, further, That the the limitation imposed by this section shall not apply to School District No. 40, within the Counties of Kershaw and Lancaster, such School district being hereby expressly authorized to vote bonds to an amount not exceeding Forty Thousand (\$40,000.00) Dollars, in excess of the bonds already issued and authorized, the proceeds of such bonds to be applied solely to the erection of a school building in said School District, and for the purchase of equipment for said building, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said School District, as provided in the Constitution upon the question of bonded indebtedness.

1934 (38) 1630; 1935 (39) 16.

That the limitation and restrictions imposed by this Section shall not apply to bonds issued, or to be issued, by Pine Grove (Turbeville) School District No. 20 of Clarendon County for the purpose of funding or paying any indebtedness incurred for the erection, equipping and furnishing of its school building at Turbeville incurred before the ratification of this amendment by the General Assembly for the purposes aforesaid, and the General Assembly shall have power by a special Act or Acts to authorize said school district to issue its bonds to fund the same without regard to limitations and without the requirement of an election.

1938 (40) 1740; 1939 (41) 7.

Provided, further, that the limitations imposed by this section shall not apply to the city of Rock Hill, county of York, said city of Rock Hill being hereby expressly authorized to vote bonds in excess of the bonds already issued and authorized, the proceeds of such bonds to be applied solely to the acquisition or purchase of real estate, either within the corporate limits of the city of Rock Hill or within five miles therefrom, and the improvement and/or construction thereon of a building or buildings for the purpose of renting and/or leasing same to newly established manufacturing industries; *Provided, Further,* that the bonded indebtedness shall be a general obligation of the city of Rock Hill,

but the net income derived from the said municipal industrial building or buildings shall be pledged and applied towards the payment of the interest upon and the retirement of said bonds; (the acquisition of the real estate and the construction of the aforesaid building or buildings are herein and hereby construed to be corporate purposes); and where the question of incurring such indebtedness is submitted to the qualified electors of the city of Rock Hill as provided in the Constitution upon the question of bonded indebtedness.

1938 (40) 1804; 1939 (41) 91.

Provided, further, That the limitations imposed by this Section shall not apply to bonded indebtedness incurred by Chesterfield County or any township or school district thereof, when the proceeds of any bonds issued by Chesterfield County, or any township or school district thereof are applied exclusively to the payment or refunding of any valid indebtedness heretofore contracted by such county, township or school district; and said county and any township and any school district thereof is hereby expressly empowered and authorized to issue bonds to pay any valid existing indebtedness under such restrictions and limitations as the General Assembly may prescribe.

1944 (43) 1575; 1945 (44) 146.

Provided, that the limitations imposed by this Section shall not apply to Union School District No. 11, Union County, South Carolina, such school district being hereby expressly authorized to issue bonds to an amount not to exceed twenty (20) per centum of the value of all taxable property in the territory embraced in said school district, as valued or assessed for taxation by the State, the proceeds of such bonds to be applied solely to the erection, equipment and maintenance of schools and school buildings in said district, and the purchase of grounds, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is to be submitted to the qualified electors of said school district, as provided in the Constitution, upon the question of bonded indebtedness.

1946 (44) 2531; 1947 (45) 25.

Provided, That the limitations imposed by this Section shall not apply to Union Hospital District, Union County, State of South Carolina, said Union Hospital District being hereby expressly authorized to issue bonds to an amount not to exceed twenty (20) per centum of the value of all taxable property embraced in said hospital district, as valued or assessed for taxation by the State, the proceeds of such bonds to be applied solely to the purpose of acquiring property, erecting or enlarging building or buildings and purchasing equipment for the construction, establishing and maintenance of a public hospital and appurtenances in said Union Hospital District or paying any indebtedness incurred for said purposes, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is to be submitted to the qualified electors of said Union Hospital District, as provided in the Constitution upon the question of bonded indebtedness.

1946 (44) 2527; 1947 (45) 32.

Provided, that the limitations as to bonded indebtedness, imposed by this Section shall not apply to the Clover School District No. 37, of York County, and that the Clover School District No. 37 of York County, may incur bonded indebtedness to an amount not exceeding twenty per centum (20%) of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created of any other municipal corporation or political subdivision of this State.

1946 (44) 2564; 1947 (45) 57.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to any school district in York County, such school districts being hereby expressly authorized to incur bonded indebtedness to an amount not exceeding Fifty (50%) per centum of the assessed value of all taxable property therein, where the proceeds of sale of such bonds are to be applied solely to the purchase of additional real estate for school purposes, the erection, maintenance, improvement and equipment of school buildings in any such school districts; and the indebtedness of any other municipal corporation or political division or subdivision in York County shall not be considered in determining the power of any such school district to incur bonded indebtedness within the limits hereby imposed, nor shall the indebtedness of any such school district or districts be considered in determining the power of any other municipal corporation or political division or subdivision in York County to incur bonded indebtedness.

1948 (45) 3130; 1949 (46) 2.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to Lancaster County and that Lancaster County may incur bonded indebtedness to an amount not exceeding Fifteen (15%) Per Centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation or political subdivision located wholly or partly within said County.

1948 (45) 2780; 1949 (46) 10.

Provided, that the limitations as to bonded indebtedness imposed by this Section shall not apply to Calhoun Falls School District No. 9, of Abbeville County, the State of South Carolina, and that the said School District may incur bonded indebtedness for school purposes to an amount not exceeding fifteen per centum (15%) of the assessed value of all taxable property therein.

1948 (45) 2250; 1949 (46) 16.

Provided, further, that the limitations imposed by this Section shall not apply to Lewisville Consolidated High School District of Chester County, *Provided*, that the bonded indebtedness of said school district shall never exceed fifteen (15%) per centum of the assessed value of all the taxable property in said school district.

1948 (45) 2511; 1949 (46) 22.

Provided, further, that the limitations imposed by this Section shall not apply to Cheraw Special School District of Chesterfield County; *Provided*, that the

bonded indebtedness of said school district shall never exceed fifteen (15%) per centum of the assessed value of all the taxable property in said school district.

1948 (45) 2529; 1949 (46) 28.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to School District No. 17 of Sumter County, and that School District No. 17 of Sumter County may incur bonded indebtedness to an amount not exceeding twelve (12%) Per Centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation, or political subdivision located wholly or partly within said County.

1948 (45) 3079; 1949 (46) 51.

Provided, further, that the limitations above imposed as to the bonded indebtedness of school districts shall not apply to the bonded indebtedness of school district No. 17 in Anderson County, and the bonded indebtedness of said school district shall not exceed twelve (12%) per centum of the assessed value of all the taxable property therein. The bonded indebtedness of said school district shall not be considered in determining the power of any municipality or any political subdivision covering or extending over the territory of said school district or portion thereof to incur bonded indebtedness.

1948 (45) 2325; 1949 (46) 82.

Provided, that the limitations as to bonded indebtedness imposed by this Section shall not apply to Hartsville School District No. 32, of Darlington County, and that Hartsville School District No. 32, of Darlington County, may incur bonded indebtedness to an amount not exceeding fifteen per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness, now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said county.

1948 (45) 2586; 1949 (46) 124.

Provided, that the limitations as to bonded indebtedness imposed by this Section shall not apply to Darlington School District No. 2, of Darlington County and that Darlington School District No. 2, of Darlington County, may incur bonded indebtedness to an amount not exceeding fifteen per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness, now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said County.

1948 (45) 2584; 1949 (46) 134.

Provided, That the limitations as to bonded indebtedness imposed by this Section shall not apply to Hunter School District No. 5, of Laurens County and that Hunter School District No. 5, of Laurens County, may incur bonded indebtedness to an amount not exceeding eighteen per centum of the assessed value of all taxable property therein, without regard to the amount of bonded

indebtedness, now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said county.

1948 (45) 2807; 1949 (46) 177.

Provided, further, that the limitations above imposed as to the bonded indebtedness of school districts shall not apply to the bonded indebtedness incurred or to be incurred by Columbia School District No. 1 in Richland County, South Carolina, and the bonded indebtedness of said school district shall not exceed fifteen (15%) per centum of the assessed value of all the taxable property therein. The bonded indebtedness of said school district shall not be considered in determining the power of any municipality or any political subdivision covering or extending over the territory of said school district or portion thereof to incur bonded indebtedness.

1948 (45); 3005; 1949 (46) 230.

Provided, that the limitations as to bonded indebtedness imposed by this Section shall not apply to School District No. 22, of Abbeville County, and that School District No. 22, of Abbeville County, may incur bonded indebtedness to an amount not exceeding fifteen per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness, now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said County.

1947 (45) 751; 1949 (46) 253.

Provided, that the limitations as to bonded indebtedness imposed by this Section shall not apply to Catawba and Ebenezer Townships in York County, said Townships, or either of them, being hereby expressly authorized to incur bonded indebtedness for any lawful purpose to an amount not exceeding ten (10%) per centum of the assessed value of all taxable property therein; and the indebtedness of any other municipal corporation or political division or subdivision in York County shall not be considered in determining the power of said Townships to incur bonded indebtedness within the limits hereby imposed, nor shall the indebtedness of said Townships, or either of them, be considered in determining the power of any other municipal corporation or political division or subdivision in York County to incur bonded indebtedness.

1948 (45) 3135; 1949 (46) 315.

Provided, that the limitations as to bonded indebtedness imposed by this section shall not apply to Westminster School District No. 17 of Oconee County, and that Westminster School District may incur bonded indebtedness to an amount not exceeding fifteen (15%) per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness, now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said County.

1948 (45) 2934; 1949 (46) 459.

Provided, That the limitations as to bonded indebtedness imposed by this section shall not apply to Orangeburg School District No. 26, of Orangeburg

County, the State of South Carolina, and that the said school district may incur bonded indebtedness for school purposes to an amount not exceeding fifteen (15%) per centum of the assessed value of all taxable property therein.

1948 (45) 2960; 1950 (46) 2125.

Provided, that the limitations as to bonded indebtedness imposed by this section shall not apply to Cedar Grove School District No. 30, of Anderson County, and that said school district No. 30 may incur bonded indebtedness to an amount not exceeding fifteen per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness, now outstanding or hereafter created, of any municipality, corporation or political subdivision located wholly or partly within said school district.

1949 (46) 886; 1951 (47) 11.

Provided, that the limitations as to bonded indebtedness imposed by Section 5, Article X, of the Constitution of South Carolina, 1895, shall not apply to the school districts in Clarendon County and that said school districts may incur bonded indebtedness to an amount not exceeding thirty (30) per cent of the assessed value of all taxable property therein without regard to the amount of bonded indebtedness now outstanding or hereafter created by any municipal corporation or political subdivision located wholly or partly within any of said school districts.

1950 (46) 2957; 1951 (47) 13.

Provided, further, that the limitations imposed by this section shall not apply to Pelzer-Williamston School District No. 20 in Anderson County, South Carolina, such school district being hereby expressly authorized to issue bonds to an amount not exceeding seven hundred and fifty thousand (\$750,000.00) dollars, in excess of the bonds already issued and authorized, the proceeds of such bonds to be applied solely to the purchase of suitable lands, the erection of a high school building, including textile and agricultural shops and athletic facilities, in said school district, and for the purchase of equipment of said buildings, under such restrictions and limitations as the General Assembly may prescribe, and where the question of incurring such indebtedness is submitted to the qualified electors of said district, as provided in the Constitution upon the question of bonded indebtedness.

1950 (46) 2765; 1951 (47) 15.

Provided, that the limitations as to bonded indebtedness imposed by Section 5, Article X of the Constitution of South Carolina, 1895, shall not apply to the Gantt School District No. 34 of Anderson County and that said school district may incur bonded indebtedness to an amount not exceeding fifteen (15%) per cent of the assessed value of all taxable property therein without regard to the amount of bonded indebtedness now outstanding or hereafter created by any municipal corporation or political subdivision located wholly or partly within said school district.

1950 (46) 2767; 1951 (47) 17.

Provided, that the limitations as to bonded indebtedness imposed by this section shall not apply to any school district in Marion County, and that any

school district in Marion County may incur bonded indebtedness to an amount not exceeding twenty-five (25%) per cent of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation or political subdivision located wholly or partly within said county.

1950 (46) 3308; 1951 (47) 19.

Provided, further, that the limitations imposed by this section shall not apply to Greer School District of Greenville County and Spartanburg County, provided, that the bonded indebtedness of said school district shall never exceed twenty (20%) per centum of the assessed value of all the taxable property in said school district.

1950 (46) 3117; 1951 (47) 23.

Provided, further, that the limitations as to bonded indebtedness imposed by this section shall not apply to Pickens Centralized High School District of Pickens County and that the said school district may incur bonded indebtedness to an amount not exceeding sixteen (16%) per cent of the assessed value of all taxable property therein without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation or political subdivision located wholly or partly within said district.

1950 (46) 3417; 1951 (47) 34.

Provided, further, that the limitations above imposed as to the bonded indebtedness of school districts shall not apply to the bonded indebtedness incurred or to be incurred by any common or high school district in Richland County, South Carolina, and the bonded indebtedness of each of the aforesaid school districts shall not exceed fifteen per centum (15%) of the assessed value of all the taxable property therein. The bonded indebtedness of each of the aforesaid common and high school districts shall not be considered in determining the power to incur bonded indebtedness by any municipality or any political subdivision of said county wholly covering or partially extending over the territory of such school district.

1949 (46) 1561; 1951 (47) 36.

Provided, that the limitations as to bonded indebtedness imposed by Section 5, Article 10 of the Constitution of South Carolina, 1895, shall not apply to any school district in Oconee County and that any school district in Oconee County may incur bonded indebtedness to an amount not exceeding fifteen (15%) per cent of the assessed value of all taxable property therein without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation or political subdivision located wholly or partly within any school district in said county.

1950 (46) 3360; 1951 (47) 40.

Provided, further, that the limitations as to bonded indebtedness imposed by this section shall not apply to any school district in Aiken County, and that any school district in said county may incur bonded indebtedness for school purposes to an amount not exceeding twenty-five (25%) per cent

of the assessed value of all the taxable property in any such school district. The bonded indebtedness of each of the aforesaid school districts shall not be considered in determining the power to incur bonded indebtedness by any municipality or any political subdivision of said county wholly covering or partially extending over the territory of any such school district.

1950 (46) 2720; 1951 (47) 67.

Provided, That the limitations as to bonded indebtedness imposed by this section shall not apply to any school district in Berkeley County, such school districts being hereby expressly authorized to incur bonded indebtedness to an amount not exceeding twenty (20%) per cent of the assessed value of all taxable property therein, where the proceeds of sale of such bonds are to be applied solely to the purchase of additional real estate for school purposes, the erection, maintenance, improvement and equipment of school buildings in any such school districts; and the indebtedness of any other municipal corporation or political division or subdivision in Berkeley County shall not be considered in determining the power of any such school district to incur bonded indebtedness within the limits hereby imposed, nor shall the indebtedness of any such school district or districts be considered in determining the power of any other municipal corporation or political division or subdivision in Berkeley County to incur bonded indebtedness.

1950 (46) 2828; 1951 (47) 114.

Provided, that the limitations as to bonded indebtedness imposed by this section shall not apply to School District No. 17 of Sumter County, and that School District No. 17 of Sumter County may incur bonded indebtedness to an amount not exceeding twenty (20%) per cent of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation, or political subdivision located wholly or partly within said county.

1950 (46) 3550; 1951 (47) 131.

Provided, further, that the limitations as to bonded indebtedness imposed by this section shall not apply to School District No. 11 of Laurens County and that said School District No. 11 of said county, may incur bonded indebtedness to an amount not exceeding thirty per centum of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created, of any municipal corporation or political subdivision located wholly or partly within said district.

1950 (46) 3243; 1951 (47) 136.

Provided, that the limitations as to bonded indebtedness imposed by Section 5, Article 10 of the Constitution of South Carolina, 1895, shall not apply to Harleyville School District No. 9 in Dorchester County and that said School District may incur bonded indebtedness to an amount not exceeding fifteen (15%) per cent of the assessed value of all taxable property therein without regard to the amount of bonded indebtedness now outstanding or

hereafter created of any municipal corporation or political subdivision located wholly or partly within said school district.

1950 (46) 3013; 1951 (47) 137.

Provided, that Olanta School District No. 21 of Florence County may incur indebtedness for school purposes in an amount up to fifteen (15%) per cent of the assessed value of the property of the said district.

1950 (46) 3049; 1951 (47) 157.

Provided, further, that the limitations imposed by this section shall not apply to the school district of Chester County provided that the bonded indebtedness of the school district of Chester County not exceed twelve (12%) per cent of all taxable property in said school district so that the entire bonded indebtedness of Chester County shall not exceed a total of twenty (20%) per cent of the assessed value of all taxable property in said county.

1950 (46) 2917; 1951 (47) 185.

Provided, that the limitations as to bonded indebtedness imposed by this Section shall not apply to any school district of Hampton County, the State of South Carolina, and that any school district in Hampton County may incur bonded indebtedness for school purposes to an amount not exceeding thirty (30%) per centum of the assessed value of all taxable property in any such school district.

1949 (46) 1308; 1951 (47) 277.

Provided, further, that the limitations imposed by this section shall not apply to school districts in Lexington County and any school district in Lexington County is hereby expressly authorized to incur bonded indebtedness not exceeding twenty per cent of the assessed value of all taxable property therein.

1950 (46) 3271; 1951 (47) 287.

Provided, further, that the limitations of this section shall not apply to any school district in Chesterfield County. That any such district may incur bonded indebtedness for school purposes to an amount not exceeding twenty (20%) per cent of the assessed value of the taxable property therein, and in determining the indebtedness that of any municipality or other political subdivision located wholly or partly within the district shall not be considered.

1950 (46) 2937; 1951 (47) 289.

- I. General Consideration.
- II. Power to Tax.
- III. Bonded Debt.
- IV. Bonds for Corporate Purposes.
- V. Limitation on Bonded Debt.
- VI. Provisos Interpreted.
- VII. Acts Not Violating Section.

Cross References.

As to limitations on bonded debt of municipal corporation, see S. C. Const., Art. 8, § 7. As to restrictions on State relative to borrowing money, see S. C. Const., Art.

8, § 3. As to taxes for bonds, see § 59-249 of the Code. As to bonds for waterworks, see § 59-481 of the Code.

I. GENERAL CONSIDERATION.

Editor's note.—This section was amended by 1947 Acts [1947 (45) 22] so as to eliminate a prior amendment thereto ratified by 1917 Acts [1917 (32) 225], which amendment dealt with limitations on the bonded indebtedness of Charleston School District within the limits of the city of

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Charleston and formed the second paragraph of this section in the 1942 Code.

This section was also amended by 1947 Acts [1947 (45) 22], so as to eliminate a prior amendment thereto ratified by 1921 Acts [1921 (32) 89], which amendment dealt with limitations on the bonded indebtedness of Charleston School District within the limits of the city of Charleston and formed the eighth paragraph of this section in the 1942 Code.

Section limits delegation of taxing power.

—This provision is intended to be a limitation upon the power of the General Assembly to delegate the power of taxation. The legislature had no power at all to delegate the taxing power until an exception was made in favor of the municipal corporations enumerated and the corporate authorities thereof. Lillard v. Melton, 103 S. C. 10, 87 S. E. 421 (1915).

And requires uniformity of taxation.—

The restriction in S. C. Const., Art. 8, § 3 is not upon the legislature, but the injunction is to the legislature to restrict the powers of the town to levy taxes. And in this section the legislature is enjoined, when vesting towns with power to tax, to require the tax to be uniform. Paris Mountain Water Co. v. Greenville, 110 S. C. 36, 96 S. E. 545 (1918).

S. C. Const., Art. 11, § 6 does not limit this section.—An act, authorizing tax levy covering bond issue for payment of indebtedness incurred by several school districts of Oconee County for educational purposes, is not violative of S. C. Const., Art. 11, § 6, providing for poll tax and State tax for paying deficiencies in school funds, since such provision is no limitation upon the power of the legislature to vest county authorities with power to levy taxes under this and the following section. Shelor v. Pace, 151 S. C. 99, 148 S. E. 726 (1929).

Scope of "power to assess and collect taxes."—The power "to assess and collect taxes" given by this section includes the power to "levy" taxes. Gaud v. Walker, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Factors essential to validity of tax.—Two things are essential to the validity of any tax imposed by a municipal corporation: (1) the power to tax must be conferred upon such corporation by an act of the Legislature. White v. Town Council, 34 S. C. 242, 13 S. E. 416 (1891); Floyd v. Perrin, 30 S. C. 1, 8 S. E. 14 (1888); (2) the power conferred must be exercised by the municipal authorities in conformity with the terms of the grant.

Legislature may levy direct tax.—The legislature is not forbidden by this section

or any other constitutional provision from levying directly a tax on a political subdivision. Evans v. Beattie, 137 S. C. 496, 135 S. E. 538 (1926).

Or authorize such levy by county or township.—The legislature may authorize the levy of a tax by the county or township authorities, or itself make the levy directly. In either event, the power to collect is conferred on the fiscal authorities of the county. Southern Ry. Co. v. Kay, 62 S. C. 28, 39 S. E. 785 (1901).

It would seem clear from the plain terms of this section that the General Assembly may delegate to the corporate authorities of a county the power to levy taxes. Gaud v. Walker, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

Since it has exclusive power of taxation.

—The Constitution has not taken from the legislature the exclusive power of taxation, but by this section it may delegate such power to the towns. Carroll v. York, 109 S. C. 1, 95 S. E. 121 (1918).

And since counties are not vested with power to levy taxes.—By the language of this section, the authority to assess and collect taxes may be vested in the corporate authorities of counties, but nowhere is it stated that power to levy taxes may be vested in them. Clary v. Harvey, 176 S. C. 512, 180 S. E. 673 (1936).

Discretionary limitations on city's taxing power.—Where an act confers on a city council the power to impose such taxes as they may deem expedient, without any specific limitation as to amount or rate of such taxes, the only limit is its judgment as to what is necessary and the limitation of this section that the taxes shall be for a corporate purpose. State v. Town Council, 39 S. C. 5, 17 S. E. 355 (1893).

Adoption of 1949 amendment [1949 (46) 51] complied with S. C. Const., Art. 16, § 1.—Palmer v. Dunn, 216 S. C. 558, 59 S. E. (2d) 158 (1950).

Stated in Mauldin v. City Council, 53 S. C. 285, 31 S. E. 252 (1898).

Cited in Cowart v. City Council, 67 S. C. 35, 45 S. E. 122 (1903), in support of the holding that a city's placing money lenders and banks in different classes for purposes of taxation is not unconstitutional; Hill v. City Council, 59 S. C. 396, 38 S. E. 11 (1901); Hall v. McBride, 73 S. C. 227, 53 S. E. 368 (1906); State v. Goodwin, 81 S. C. 419, 62 S. E. 1100 (1908); Holler v. Rock Hill School Dist., 60 S. C. 41, 38 S. E. 220 (1901); Germania Sav. Bank v. Darlington, 50 S. C. 337, 27 S. E. 846 (1897); Fooshe v. McDonald, 82 S. C. 22, 63 S. E. 3 (1908); McCright v. Camden, 49 S. C. 78, 26 S. E.

984 (1897); *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900); *Ellerbe v. Marion County Lumber Co.*, 99 S. C. 158, 82 S. E. 1049 (1914); *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322 (1898); *Standard Oil Co. v. Spartanburg*, 66 S. C. 37, 44 S. E. 377 (1903); *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928); *Stevenson v. Carrison*, 122 S. C. 212, 115 S. E. 251 (1922); *New York Life Ins. Co. v. Bradley*, 83 S. C. 418, 65 S. E. 433 (1909); *Graham v. Erwin*, 114 S. C. 419, 103 S. E. 750 (1920); *State v. Morehead*, 42 S. C. 211, 20 S. E. 544 (1894); *State v. Mooror*, 152 S. C. 455, 150 S. E. 269 (1929); *Duke Power Co. v. Greenwood County*, 10 F. Supp. 854 (1935); *Bollin v. Graydon*, 177 S. C. 374, 181 S. E. 467 (1935); *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937); *Kalber v. Stokes*, 194 S. C. 339, 9 S. E. (2d) 785 (1940); *Parrott v. Gourdin*, 205 S. C. 364, 32 S. E. (2d) 14 (1944); *Kalber v. Redfearn*, 215 S. C. 224, 54 S. E. (2d) 791 (1949).

II. POWER TO TAX.

Each county is separate taxing district.—Each county of the State is a separate taxing district, and revenue measures may be applied therein which affect only citizens or property within the territory of the county. *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

As are individual school districts.—Individual school districts, like counties, are each separate taxing districts under this section. Thus, a license tax applies uniformly to all persons and property within the area in which it is applicable. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

County may levy tax for corporate purposes.—By this section of the Constitution, the General Assembly is authorized to vest in the municipal authorities of a county the power to lay taxes for corporate purposes. *State v. Goodwin*, 81 S. C. 419, 62 S. E. 1100 (1908); *Green v. West*, 161 S. C. 161, 159 S. E. 23 (1931).

Upon considering this section with S. C. Const., Art. 10, § 6.—When this section and S. C. Const., Art. 10, § 6 are considered together, the purposes for which a county may levy a tax, as specifically stated in S. C. Const., Art. 10, § 6, are embraced within the term "corporate purposes" as used in this section. *Glymph v. Smith*, 170 S. C. 486, 170 S. E. 913 (1933); *Cothran v. Mallory*, 211 S. C. 387, 45 S. E. (2d) 599 (1947).

Such as public auditorium.—If the erection of a public auditorium is for a purpose enumerated in S. C. Const., Art. 10, § 6

it would be for a corporate purpose within the contemplation of this section. And a public auditorium may be properly classified as a "public building" within the meaning of that term as used in S. C. Const., Art. 10, § 6. *Cothran v. Mallory*, 211 S. C. 387, 45 S. E. (2d) 599 (1947).

Or educational purposes.—Under this section of the Constitution, the General Assembly is clearly given the power to authorize a county to levy taxes for educational purposes. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

Without being sole beneficiary of tax levy.—There is nothing whatever in the Constitution which provides that the legislature shall have no power to authorize a county to levy a tax or issue bonds for any purpose unless the county is the sole beneficiary thereof, to the exclusion of the State or any other body politic and corporate. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

But "corporate purposes" do not include bonds for sewer construction.—Although it was contended that a county supply act permitting the county to issue bonds for the construction of sewers was within the "corporate purposes" expressed in this section, yet this section was held to have no application to such county act. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

Section applies to license taxes.—A license tax is a tax in the ordinary acceptance of that term. As such it comes within the provisions of our tax laws and, specifically, within the provisions of this section. *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

And does not prevent mandamus for tax levy.—Mandamus to compel the county authorities, through whom taxes are assessed and collected, to levy a tax to pay a judgment on township bonds cannot be denied on the theory that because the legislature may, under this section, vest in the township authorities power to assess and collect taxes for corporate purposes, it cannot vest such power in county officers. *Graham v. Folsom*, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464 (1906).

Unless there is no power to tax.—Under this section authorizing the General Assembly to vest in municipal authorities of a county power to levy taxes for corporate purposes, the Supreme Court cannot issue a mandamus to compel the county board of commissioners to levy a special tax to pay ordinary claims against the county where the General Assembly has not con-

ferred such power. *State v. Goodwin* (S. C.), 59 S. E. 35 (1907).

Where the legislature adjourned without passing a supply bill for Cherokee County, leaving the county without means of carrying on its functions, the court held that the county supervisors and board of county commissioners did not have the power to compel the county auditor to levy a tax. *Clary v. Harvey*, 176 S. C. 512, 180 S. E. 673 (1935).

Section does not deny reasonable exemptions to manufacturing plants.—This section does not prohibit the exemption of manufacturing establishments from county taxes for a reasonable period of time. *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

And real property occupied by charity is exempt.—Any attempt of the General Assembly to exempt from taxation real estate other than the grounds and buildings actually occupied by specified and named charities is unconstitutional and void. *Strong v. Sumter*, 185 S. C. 203, 193 S. E. 649 (1937).

Exemption must not increase taxes on nonexempt property.—Under this section providing that the General Assembly shall require that all property, except that heretofore exempted, within the limits of municipal corporations be taxed for the payment of debts contracted under the authority of law, a provision in a city ordinance exempting \$100 worth of household furniture from the property on which the tax is laid does not invalidate the whole ordinance, unless it is shown that by reason of such exemption the taxes on the property not exempted have been increased. *State v. Town Council*, 39 S. C. 5, 17 S. E. 355 (1893).

III. BONDED DEBT.

Meaning of "bonded indebtedness".—"Bonded indebtedness", within municipality's constitutional debt limit, means indebtedness lawfully contracted for corporate purposes, payable from taxes on all property within municipality. *Bolton v. Wharton*, 163 S. C. 242, 161 S. E. 454 (1931).

Debt created without vote is not "bonded debt."—Under S. C. Const., Art. 8, § 7, providing that no city or town shall incur any bonded debt which, including existing bonded indebtedness, shall exceed 8 per centum of the assessed value of the taxable property therein, and that "no such debt" shall be created without submitting the question as to the creation thereof to the qualified electors of the city or town, and this section, limiting the aggregate in-

debtedness of any territory over which several political divisions or municipal corporations possess power to levy a tax 15 per centum of the value of the taxable property, an indebtedness of a city in the form of notes, created without submission of the question as to its creation to a vote of the electors, is not a part of the "bonded debt" or "bonded indebtedness" of such city, which refers only to such obligations as are thus created. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

And neither is debt met without tax levy.—Obligations of a county, secured by the pledge of a fund which might reasonably be expected to meet the obligations without resorting to the levy of a property tax, do not constitute bonded debt within the meaning of the constitutional limitations, notwithstanding that the full faith, credit, and taxing power of a political subdivision are pledged for the payment of the obligations. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926); *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926); *State v. Moorier*, 152 S. C. 455, 150 S. E. 269 (1929); *Haddon v. Cheatham*, 161 S. C. 384, 159 S. E. 843 (1931).

Or loan met by pledge of existing revenues.—Pledging of existing revenues of city waterworks system to repay obligations, created to enlarge or extend system, does not make loan, evidenced by revenue bonds issued for such purpose, a "debt" within this section. *Roach v. Columbia*, 172 S. C. 478, 174 S. E. 461 (1934).

Or debt to be paid from future revenues.—Where a county pursuant to statutory authority to build a hydroelectric plant entered into a contract with the Federal public works administrator providing that the county issue bonds, the revenue from which and such bonds were to be payable only from the revenue of the plant, the bonds do not constitute a debt within the meaning of this provision. *Duke Power Co. v. Greenwood County*, 19 F. Supp. 932 (1937). was to go for the construction of said plant

County revenue bonds, issued to pay for construction of county hydroelectric plant, are not debts within constitutional limitations. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

Or debt evidenced by Columbia housing authority bonds.—Bonds to be issued by the Columbia housing authority will not constitute an increase in the bonded indebtedness of the city of Columbia in violation of this section of the Constitution, for in view of § 36-165 of the Code, such bonds are not to be computed in arriving at the limitations of the bonded indebted-

ness of the city. *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

But school district notes not under seal may be "bonded debt."—The notes of Landrum School District No. 45, issuance of which was authorized by an act of the legislature, though not issued under seal, are primary obligations of the district primarily secured by a tax levied on all taxable property therein and hence part of "bonded debt" of district within this section. *Thomson v. Christopher*, 141 S. C. 92, 139 S. E. 178 (1927).

Issuing bonds where same territory is in different municipalities.—This section contemplates the issuing of bonds by different political divisions or municipal corporations extending over the same territory or parts thereof. *Burriss v. Brock*, 95 S. C. 104, 79 S. E. 193 (1913).

IV. BONDS FOR CORPORATE PURPOSES.

Legislature is not precluded from issuing bonds.—An act validating an election authorizing the issuance of bonds by two townships and providing for the issuance of the bonds and their payment is not invalid for this section, vesting the power to issue bonds in townships, does not preclude their issuance by the legislature. *Fripp v. Coburn*, 101 S. C. 312, 85 S. E. 774 (1915).

Public hospital is corporate purpose.—The legislature may, without the aid of a constitutional amendment, create a hospital district out of a county for the construction and operation of a public hospital. It thereby becomes the corporate purpose of the district which is a governmental subdivision of the State. *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

An act authorizing Marion County commissioners to issue and sell bonds for Reaves township for the establishment of a hospital confers a power which is for a "corporate purpose" within this section. *Battle v. Willcox*, 128 S. C. 500, 122 S. E. 516 (1924).

As is public school.—The issue of bonds by a city for the purpose of purchasing grounds and erecting school buildings thereon is a "corporate purpose" within this section providing that cities, etc., may be vested with power to assess and collect taxes for corporate purposes. *Jordan v. Greenville*, 79 S. C. 436, 60 S. E. 973 (1908).

And road construction.—An act requiring the registry of all vehicles in a designated county, and imposing a license fee, the proceeds of which are to be applied to the construction and repair of roads, is not special

legislation in violation of S. C. Const., Art. 3, § 34, subdiv. 9, prohibiting special laws where a general law can be made applicable, since the act is enacted in the exercise of the taxing power under this section authorizing the assessment and collection of taxes by counties for corporate purposes and is uniform in respect to persons and property within the jurisdiction of the body imposing the same, which is limited only by S. C. Const., Art. 10, § 6, fixing the purposes for which the tax may be levied. *State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922).

But not railroad.—An act delegating authority to townships to issue bonds in aid of railroads is repugnant to this section empowering the legislature to delegate to townships power to raise money "for corporate purposes." *Coleman v. Broad River*, 50 S. C. 321, 27 S. E. 774 (1897). But see *Atlantic Trust Co. v. Darlington*, 63 F. 76 (1894), affirmed in 68 F. 849 (1895), dismissed in 18 S. Ct. 947, 42 L. Ed. 1214 (1898), in which it was held that the powers of a municipal corporation, dependent wholly upon the source whence they are derived, may be enlarged at any time by the legislature. *Rogers v. Burlington*, 70 U. S. (3 Wall.) 654, 18 L. Ed. 79 (1865).

Though bonds may be valid if issued therefor.—Though an act delegating authority to townships to issue bonds in aid of railroads is repugnant to this section empowering the legislature to delegate to townships power to raise money "for corporate purposes," yet an act declaring bonds issued pursuant to said act to be township debts, and providing for their payment, is not unconstitutional as it is not a validating act, but is an exercise of the power to tax. *Coleman v. Broad River*, 50 S. C. 321, 27 S. E. 774 (1897).

And taxes may not be levied for purchase of railroad stock.—Acts authorizing subscriptions by a county to the stock of a railroad, and giving the county power to assess and collect taxes to pay the subscriptions, are in violation of this section providing that counties, townships, etc., may be vested with power to assess and collect taxes "for corporate purposes." *Congaree Const. Co. v. Columbia*, 49 S. C. 535, 27 S. E. 570 (1897).

V. LIMITATION ON BONDED DEBT.

Section deals with limitation on bonded debt.—This section of the Constitution deals among other things with the amount of bonded debt which may be incurred by any

town or city, and any provision, except the power to refund existing indebtedness which it was deemed necessary to include in this section, was also included in S. C. Const., Art. 8, § 7. *Williams v. Rock Hill*, 177 S. C. 82, 180 S. E. 799 (1935).

Debt may not be raised above constitutional limit.—Under S. C. Const., Art. 8, § 7, restricting the indebtedness of municipal corporations to eight per cent of the assessed value of taxable property therein, and this section providing that whenever several municipal corporations cover the same territory, or portions thereof, each shall so exercise its power to increase its debt to the limit of eight per cent that the aggregate debt on any territory shall not exceed fifteen per cent of the value of the taxable property therein, a city may incur an indebtedness to an amount which, together with the debt of a school district co-extensive with the city, and its proportion of the county debt computed on its proportion of the taxable property, shall not exceed fifteen per cent of the value of taxable property therein, provided such city indebtedness does not exceed eight per cent thereof. *Todd v. Laurens*, 48 S. C. 395, 26 S. E. 682 (1897).

Under this section, as an incorporated high school district is a distinct entity from the common school districts out of which it is created, the fact that one of the common school districts has already made a levy of four mills, which it cannot exceed, will not prevent the high school district from making a levy of one mill, the aggregate indebtedness of the common school districts and high school district not exceeding fifteen per cent of the value of the taxable property within their territory. *Welch v. Getzen*, 85 S. C. 156, 67 S. E. 294 (1910).

An act authorizing the city of Charleston to issue coupon notes to refund outstanding indebtedness is unconstitutional under S. C. Const., Art 8, § 7, and this section limiting bonded indebtedness of cities. *Sullivan v. City Council*, 133 S. C. 156, 130 S. E. 872 (1925).

And section guards against overburdening such debt.—Overlapping subdivisions and overburdening are safe-guarded against by this section. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

It limits bond issue authorized "to any amount".—An act giving the town of Darlington power to issue bonds in aid of railroads "to any amount" is not void for repugnancy to this section, providing that the bonded debt of a municipal corporation shall not exceed eight per cent of its as-

essed valuation, as conflict can be avoided by reading the constitutional limitation into the act as a qualification of the power conferred. *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846 (1897). It was held, in this case, that the act authorizing such bonds was unconstitutional as giving a city the right to make an individual assessment, in contravention of S. C. Const., Art. 10, § 1, but it was further held that on the principle "communis error facit jus," said bonds in the hands of innocent holders would not be declared void.

But county may issue bonds although city debt is thus raised above limit.—Under this section a county can issue and sell bonds up to eight per cent of the total assessed value of all the property in the county, and it is immaterial that a town in the county has a bonded debt which, if added to its proportionate part of the proposed county issue, will raise that town's bonded debt above the fifteen per cent limit fixed in such constitutional provision. *Elliott v. Heyward*, 127 S. C. 468, 121 S. E. 257 (1924).

An act providing for a road and bridge improvement bond issue by Charleston County does not violate this section, limiting indebtedness of territory of State which is covered by more than one subdivision of State to fifteen per cent of assessed valuation of assessable property, though bonded debt of city of Charleston exceeds fifteen per cent of its taxable property. *Nettles v. Cantwell*, 112 S. C. 24, 99 S. E. 765 (1919); *Poulnot v. Cantwell*, 129 S. C. 171, 123 S. E. 651 (1924).

And school district may do likewise.—Under this section a school district can issue bonds up to eight per cent of the total assessed value of all the property in the district, and it is immaterial that, if territory within district is chargeable with proportionate part of county's bonded indebtedness and proportionate part of township's bonded indebtedness, territory which is embraced within the town will be bonded for more than fifteen per cent of assessed value of property and that portion of territory or township which is situate in school district will be bonded for more than fifteen per cent of assessed value of property situate therein. *Banks v. School District*, 129 S. C. 218, 123 S. E. 834 (1924).

State bonded debt is not to be prorated.—The separate bonded debt of the State is not to be prorated to any particular subdivision in order to ascertain whether the fifteen per cent limitation has been reached in the territory of the subdivision. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

And is not used to estimate municipal debt.—This section, limiting the indebtedness of a municipality or political division to fifteen per cent of its taxable valuation, does not require the State debt to be included therein. *Lancaster School District v. Robinson-Humphrey Co.*, 64 S. C. 545, 42 S. E. 998 (1902).

Debt does not exist until bonds are sold.—A "bonded debt" does not exist within the meaning of this section, limiting the permissible bonded debt of a county, until the bonds authorized by statute have been issued by completion of contract of sale and actual or constructive delivery. *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846 (1897); *Black v. Fishburne*, 84 S. C. 451, 66 S. E. 681 (1910); *Poulnot v. Cantwell*, 129 S. C. 171, 123 S. E. 651 (1924).

Last assessment before bond issue controls debt limit.—This section, providing that no bonded debt incurred by a county or municipality shall exceed eight per cent of the assessed value of the taxable property therein, appoints as a standard the last tax assessment before the bond issue, and no subsequent assessment is material. *State v. Cornwell*, 40 S. C. 26, 18 S. E. 184 (1893).

Excessive debt must be proved.—There is a presumption in favor of the constitutionality of legislative enactments, and a statute authorizing the issuance of township bonds cannot be held invalid on the theory that the bonds would exceed the limit of indebtedness prescribed by this section where there is no proof of that fact. *Fripp v. Coburn*, 101 S. C. 312, 85 S. E. 774 (1915).

Limitations on waterworks bonds are repealed.—The amendment to S. C. Const., Art. 8, § 7, which provides that the constitutional limitations imposed by the section which it amends shall not apply to the bonded indebtedness incurred by certain cities where the proceeds of the bonds are applied solely for the purchase and maintenance of waterworks plants, repeals, as to the cities therein mentioned, this section providing that municipal corporations or political divisions covering the same territory and possessing the power to levy a tax and contract a debt shall so exercise the power to increase their debts that the aggregate debt in any territory of the State shall never exceed fifteen per cent of the value of all taxable property in such territory. *Seegers v. Gibbes*, 72 S. C. 532, 52 S. E. 586 (1905); *Bray v. City Council*, 62 S. C. 57, 39 S. E. 810 (1901).

And such bonds are not bonded indebtedness.—Where the purpose of waterworks bonds of a city are within the contemplation

of the amendments to this section or S. C. Const., Art. 8, § 7, those bonds must be excluded in determining whether an issue of bonds will cause the bonded indebtedness to exceed the amount authorized by the Constitution. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Issuance of bonds authorized by an act of the legislature is not violative of this section, limiting bonded indebtedness, in view of S. C. Const. Art. 8, § 7, declaring such limitation inapplicable to bonded indebtedness in and by any municipal corporation where the proceeds of bonds are applied solely to purchase, establishment, and maintenance of sewer system. *Rutledge v. Greater Greenville Sewer District*, 139 S. C. 188, 137 S. E. 597 (1927).

Section applies to combined debts of consolidated districts.—Where several districts are consolidated, the fiscal authority of the constituent districts is destroyed and the debts of each become obligations of the consolidated district, so that it is immaterial, as respects the limitation of this section, what the indebtedness of a constituent district is as its debt becomes the debt of the consolidated district and is payable out of its assets. *Walker v. Bennett*, 125 S. C. 389, 118 S. E. 779 (1923).

But not to refunding previous debt.—This section does not apply to issue of bonds to refund a previously existing debt. *McCreight v. Camden*, 49, S. C. 78, 26 S. E. 984 (1897).

Or to assessment district for local improvements.—The limitations contained in this section do not apply in a special assessment district for local improvements. *Sanders v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

Limitations on bond issue in auditorium district.—An auditorium district may not issue bonds for the purposes authorized by the legislature to the full extent of eight per cent of the taxable property which it contains, regardless of the fifteen per cent limitation. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

Drainage acts do not violate this section as the section refers to indebtedness for corporate purposes payable out of taxes levied on all property within their boundaries and not to assessments for local improvements. As a drainage district is not a "political division or subdivision" invested with governmental functions, certificates of indebtedness to be issued under the acts are not bonds in a strict and technical sense, because they are not payable by taxation in

the strict sense of that term. *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 128 (1916).

Nor does act authorizing Columbia stadium construction.—Act authorizing city to construct stadium and issue therefor bonds payable solely from revenue derived from stadium, without approval of voters, was held not to violate this section limiting city's "bonded debt" because general credit of the municipality was not given. *Cathcart v. Columbia*, 170 S. C. 362, 170 S. E. 435 (1933).

VI. PROVISOS INTERPRETED.

Proviso may be retroactive.—The proviso of this section, proposed in 1920 and subsequently ratified, permitting Bogansville Township to increase its bonded indebtedness had such retroactive effect as to validate a proposed issue of bonds which, at time of passage of Act March 1, 1919 (31 St. at Large 595), authorizing the issue, was in excess of constitutional limitation then in force. *Robinson v. Askew*, 129 S. C. 188, 123 S. E. 822 (1924).

Where amount of bonds authorized by school district election could be issued only in part on account of constitutional limitation, the trustees had authority to issue remaining portion of bonds after adoption in 1927 of amendment to this section. *Covington v. McInnis*, 144 S. C. 391, 142 S. E. 650 (1927).

And self-executing.—The proviso of this section, permitting Marlboro Graded School District No. 10 to vote bonds to amount exceeding original constitutional limitations on its indebtedness, is self-executing and effective without enactment of special statute, in view of practically identical language of previous amendments of such Article as to other school districts. *McColl v. Marlboro Graded School District*, 143 S. C. 120, 141 S. E. 265 (1928).

And may introduce substitute limitation.—This section authorizing School District No. 10, Cherokee County, to vote bonds not exceeding \$300,000, and providing that limitations imposed by original section should not apply to such district, introduces a substitute limitation, and subsequent bond issue bringing bonded indebtedness to amount exceeding \$300,000 is invalid, notwithstanding that an act purported to authorize such district to borrow \$50,000. *Smith v. Littlejohn*, 151 S. C. 137, 148 S. E. 719 (1929).

Ratifying act may not change joint resolution.—Where a joint resolution proposed an amendment to S. C. Const., Art. 8, § 7, and also provided that the limitation in such amendment as to municipal bonds and in

S. C. Const., Art. 4, § 5, should not apply to bonded indebtedness of certain cities, and an act to ratify the amendment as to S. C. Const., Art. 8, § 7, set forth that the reference to S. C. Const., Art. 4, § 5 was erroneous in that it did not apply to bonds, but the Article in question should have been this section, the legislature had no power to change the terms of the joint resolution so as to express the evident intent of the lawmakers and substitute this section for S. C. Const., Art. 4, § 5, but the other portion of the amendment is operative without reference to such article. *Bray v. City Council*, 62 S. C. 57, 39 S. E. 810 (1901).

Marlboro election petition need not be signed by majority of freeholders.—The proviso to this section, requiring that question of incurring additional indebtedness authorized thereby be submitted to qualified electors of Marlboro school district created thereunder as provided in Constitution, was held not to require that petition for election be signed by majority of freeholders, as provided in S. C. Const., Art. 8, § 7, and S. C. Const., Art. 2, § 13, in case of municipal bonded indebtedness, instead of one third as required by general school bond law. *McColl v. Marlboro Graded School District*, 143 S. C. 120, 141 S. E. 265 (1928).

Limitation is removed as to city of Florence.—By S. C. Const., Art. 8, § 7, and this section, the city of Florence is exempted from the limitations as to bonded indebtedness of those sections. *Lucas v. Barringer*, 120 S. C. 68, 112 S. E. 746 (1922).

As the proceeds of waterworks and sewerage bonds of the city of Florence were to be used for "improving and extending" the systems, these purposes were embraced within the amendment "building, directing and maintaining," and as the proceeds of street improvement bonds were to be used for "building, repairing and improving" streets and sidewalks, the bond issues came within the provision of the constitutional amendments to S. C. Const., Art. 8, § 7, and this section, and did not exceed the constitutional or statutory limitations. *Lucas v. Barringer*, 120 S. C. 68, 112 S. E. 746 (1922).

Where the proceeds of an issue of bonds were to be used for the purpose of improving and extending the waterworks and sewerage system of the city of Florence, and the issue was under the S. C. Const., Art. 8, § 7, and this section, in neither of which did the word "or" appear in connection with the words "waterworks and sewerage," the 1915 amendments' use of "exclusively for any of said purposes" negatives a disjunctive interpretation, "any"

meaning one or more, and the bond issue was not void as submitting two purposes jointly as one proposition. *Lucas v. Baringer*, 120 S. C. 68, 112 S. E. 746 (1922).

Bonds of Spartanburg may exceed 15 per cent.—The adoption of an amendment to this section and S. C. Const., Art. 8, § 7, exempting city of Spartanburg from constitutional bond debt limits where bonds are for certain purposes, is not an adoption of the proviso that the amount of bonds should not exceed fifteen per cent of the assessed value of property in the city in view of failure of title of proposing resolution and of ratifying act, and failure of ballot to indicate that such proviso was contained therein. *Heinitsh v. Floyd*, 130 S. C. 434, 126 S. E. 336 (1925); *Harris v. Floyd*, 132 S. C. 487, 129 S. E. 833 (1925).

Amendment relating to Newberry County is valid.—The amendment to this section relating to the issuance of bonds by Newberry County is valid, even though after resolution passed by the House it was amended by the Senate, and such amended resolution was not read three times in the House as required by S. C. Const., Art. 16, § 1. *Weeks v. Ruff*, 164 S. C. 398, 162 S. E. 450 (1932).

As is limitation on School District No. 10, Cherokee County.—School District No. 10 of Cherokee County has continuing authority under the 1923 amendment to this section, subject to the restrictions therein named, to vote and issue bonds of the district solely for school purposes, provided that the aggregate amount of such bonds is never in excess of \$300,000.00. *Middleton v. Littlejohn*, 179 S. C. 88, 183 S. E. 593 (1936).

In the 1923 amendment to this section, other enumerated restrictions in lieu of the original restrictions were placed upon School District No. 10 of Cherokee County. *Middleton v. Littlejohn*, 179 S. C. 88, 183 S. E. 593 (1936).

Under the original provisions of this section of the Constitution, School District No. 10 of Cherokee County could not issue any bonded indebtedness which exceeded eight per centum of the assessed value of all the taxable property therein. This was changed in 1923 in so far as this particular school district was concerned. *Middleton v. Littlejohn*, 179 S. C. 88, 183 S. E. 593 (1936).

Scope of amendment relating to York County.—"Any school district in York County" is broad enough to cover and embrace not only common school districts, but also high school districts. *Pursley v. Inman*, 215 S. C. 243, 54 S. E. (2d) 800 (1949).

VII. ACTS NOT VIOLATING SECTION.

Act abolishing township highway commission.—An act abolishing a township highway commission, devolving all of its duties upon the advisory board and the county engineer, is not in conflict with this section relating to a township's power to assess and collect taxes for corporate purposes, as the highway commission was not the corporate authority of the township and the General Assembly has not vested them with the power to assess and collect taxes. *Askew v. Smith*, 126 S. C. 159, 119 S. E. 378 (1923).

Act allowing bond issue to pay for State hospital site.—Act No. 889 of 1946 Acts [1946 (44) 2612], allowing counties required to furnish land in construction of new buildings for any State institution to issue bonds to pay for the land, was held not to violate this section nor the following section. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

Act authorizing Anderson County school bonds.—An act as to Anderson County school bonds, providing for issuance of bonds to bear a rate of interest not exceeding five per cent, payable semi-annually, does not violate this section stating limit of indebtedness, since the aggregate bonded debt, including the proposed issue, will be within the limit if the paving assessment certificates and sewerage bonds are excluded, as must be done. *Brownlee v. Brock*, 107 S. C. 230, 92 S. E. 477 (1917).

Act dividing Dillon County into high school districts.—An act providing for division of Dillon County into high school districts, and vesting county board of education with the power to levy taxes for support of high schools, does not violate this section. *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

Act establishing Greater Greenville Sewer District.—The act of March 30, 1925 [1925 (34) 744] and amendments thereto through 1941, establishing Greater Greenville Sewer District, do not violate this section. *Floyd v. Parker Water & Sewer Sub-District*, 203 S. C. 276, 17 S. E. (2d) 223 (1941).

Acts involving county revenues.—In *State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922), and *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946), involving varying sources of revenue of different counties, the special acts relating thereto were upheld as within the authorization of this section whereby the corporate authorities of counties, etc., may be vested with power to assess and collect taxes for corporate pur-

poses. *Owens v. Smith*, 216 S. C. 382, 58 S. E. (2d) 332 (1950).

Act providing for ferry operation by county.—An act providing for the construction and operation by Charleston County of a ferry does not violate this section limiting the permissible bonded debt of any county. *Poulnot v. Cantwell*, 129 S. C. 171, 123 S. E. 651 (1924).

Act requiring county auditor to levy vehicle license fee.—An act directing and requiring the county auditor to assess and levy each year a license fee on all resident owners of horse-drawn vehicles, automobiles, etc., for the purpose of meeting the principal and interest of bonds thereby authorized to be issued for highway improvement, makes a direct imposition of the tax and does not delegate the authority to levy the license and tax to the county auditor in violation of this section. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915).

Act requiring "county officers" to levy tax for bond interest.—"County officers," in an act declaring it the duty of the county officers, charged with assessment and collection of taxes, to levy and collect from the property within a school district a sum to pay interest on bonds issued by the district and to create a sinking fund to pay the bonds, has reference to those officers in the

county who are authorized to levy and collect the taxes under this section, and so does not contravene this section if vesting in the board of trustees of the district the power to levy and collect such taxes. *Dove v. Kirkland*, 92 S. C. 313, 75 S. E. 503 (1912).

Coastal highway act.—Coastal highway act, creating highway district and levying special assessment, does not violate this section as being special assessment by legislative action. *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

Statute creating court for part of Oconee County is not invalid as taking funds from county for benefit of citizens and taxpayers of a portion thereof. *Glymph v. Smith*, 170 S. C. 486, 170 S. E. 913 (1933).

Statute relating to Charleston County appropriations.—Statute which gives the Charleston County council power to make appropriations, levy taxes, incur indebtedness, and issue bonds is not an invalid delegation of legislative authority to the county council in violation of S. C. Const., Art. 3, § 1, which vests the legislative power of the State in the General Assembly, but such authority may be delegated under S. C. Const., Art. 7, § 11, and this section. *Gaud v. Walker*, 214 S. C. 451, 53 S. E. (2d) 316 (1949).

§ 6. Credit of State; for what purposes tax levied or bonds issued; provisos.

The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; and the State shall not become a joint owner of or stockholder in any company, association or corporation. The General Assembly shall not have power to authorize any county or township to levy a tax or issue bonds for any purpose except for educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, County officers, and for litigation, quarantine and court expenses and for ordinary County purposes, to support paupers, and pay past indebtedness: *Provided*, That the limitation imposed by this Section shall not apply to any township in the County of Greenwood, nor to any township in the County of Saluda, through which in whole or in part, the line of railroad of Greenwood and Saluda Railroad shall be located and constructed, nor to the County of Saluda, such said townships in Greenwood County and Saluda County, and the County of Saluda, being hereby expressly authorized to vote bonds in aid of the construction of the said proposed railroad under such restrictions and limitations as the General Assembly may prescribe hereinafter: *Provided*, That the amount of such bonds shall not exceed eight per centum of the assessed valuation of the taxable property of such townships.

1910 (26) 1070; 1911 (27) 11.

That the limitations imposed in Section 7, of Article VIII, and Sections 5 and 6 of Article X, of the Constitution of the State of South Carolina, shall

by act No. 9 of 1959, page 8.

not apply to the bonded indebtedness incurred by the County of Richland, when the proceeds of any bonds issued by said county are applied exclusively to the purpose of erection, improvement and maintenance of a public hospital and court house or in payment of debts incurred, and when the question of incurring such indebtedness is submitted to the qualified electors of said county, as provided by law.

1920 (31) 1721; 1921 (32) 156.

Provided, further, That the limitations imposed by these Sections [Art. 10, §§ 5 and 6] shall not apply to the Township of Christ Church Parish, in Charleston County, contained within the following area: northeast by Awendaw Creek; southeast by the Atlantic Ocean and the Township of Sullivan's Island; southwest by Charleston Harbor, and northwest by the Wando River and the Berkeley County line, thus containing within the said area the Town of Mount Pleasant, S. C., such township being hereby expressly authorized to vote bonds to an amount not to exceed one hundred and fifty thousand (\$150,000.00) dollars, the proceeds of such bonds to be applied solely to the erection and maintenance of a railroad from a point in Berkeley County, in and through the township of Christ Church Parish, in and through the Town of Mount Pleasant, on Charleston Harbor, under such restrictions and limitations as the General Assembly may prescribe and when the question of incurring said indebtedness is submitted to the qualified electors of said township, as provided in the Constitution, upon the question of bonded indebtedness.

1922 (32) 1344; 1923 (33) 48.

Provided, That the limitations imposed by these Sections [Art. 10, §§ 5 and 6] shall not apply to St. James Santee Township in Charleston County contained within the following area: north by Berkeley County line; east by Santee River; south by Atlantic Ocean and west by Awensdaw Creek.

Such township being hereby expressly authorized to vote bonds to an amount not to exceed one hundred and twenty-five thousand (\$125,000.00) dollars, the proceeds of such bonds to be applied solely to the erection and maintenance of a railroad from a point in Berkeley County in and through the Township of St. James Santee, in and through the unincorporated village of McClellanville on Jeremy Creek, under such restrictions and limitations as the General Assembly may prescribe and when the question of incurring such indebtedness is submitted to the qualified electors of said township as provided in the Constitution, upon the question of bonded indebtedness.

1925 (34) 613; 1927 (35) 194.

Provided, That the General Assembly shall have power to authorize a county or township to levy a tax or issue bonds for the purposes of construction and maintenance of an airport or the construction and maintenance of landing strips.

1944 (43) 1572; 1945 (44) 10.

- I. General Consideration.
- II. Indebtedness of the State.
- III. Purposes for which County and Town Bonds Issued.
- IV. Acts Not Violating Section.

Cross Reference.

As to submitting the question of increasing the public debt to the qualified electors in a general State election, see notes to S. C. Const., Art. 10, § 11.

I. GENERAL CONSIDERATION.

Section does not apply to debt created before Constitution adopted.—Limitation does not apply to valid obligations incurred before adoption of Constitution. *Graham v. Folsom*, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464 (1906).

Legislature may authorize purchase of standing bridges.—The purpose of this section is to leave the legislature free to authorize counties and townships to establish and maintain public roads, buildings, and bridges, and the word "build" may be employed in the sense of obtain, secure, or acquire, as well as in the ordinary meaning, and hence the purchase of standing bridges is not a violation. *Verner v. Muller*, 89 S. C. 545, 72 S. E. 393 (1911); *Nettles v. Cantwell*, 112 S. C. 24, 99 S. E. 765 (1919); *Paris Mountain Water Co. v. Greenville*, 105 S. C. 180, 89 S. E. 669 (1916).

But funds may not be spent for unconstitutional purposes.—This section of the Constitution may not be circumvented by the simple device of creating a commission for and in the name of the county to expend funds raised by taxation for purposes not embraced within said constitutional provision. *Parrott v. Gourdin*, 205 S. C. 364, 32 S. E. (2d) 14 (1944).

Repugnant statute must be unconstitutional at enactment.—See note to S. C. Const., Art. 17, § 11.

Cited in *Murph v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907), as to the validity of the dispensary act and laws pursuant thereto, now abolished; *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928); *Duke Power Co. v. Greenwood County*, 10 F. Supp. 854 (1935); *Bollin v. Graydon*, 177 S. C. 374, 181 S. E. 467 (1935); *Benjamin v. Housing Authority*, 198 S. C. 79, 15 S. E. (2d) 737 (1941); *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943); *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946); *Byrd v. Lawrimore*, 212 S. C. 281, 47 S. E. (2d) 728 (1948).

II. INDEBTEDNESS OF THE STATE.

Credit of State may not be pledged for hydroelectric project.—In *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935), the court held that the full faith, credit, and taxing powers of the State or any of its political subdivisions could not be pledged either directly or contingently for payment of obligations issued by Public Service Authority in construction of hydroelectric and navigation project.

But bonds payable from special funds are not State debts.—Bonds issued by State or its political subdivisions, which are payable out of special funds, do not create "debts of the State or its political subdivisions" within constitutional limitations on indebtedness of State or its subdivisions, although the full faith, credit, and taxing powers of State or its political subdivisions are pledged for payment of such bonds. *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935).

Where revenues therefrom are sufficient for repayment.—Bonds issued by the State or its political subdivisions, which are payable out of special funds, do not create debts of the State or its political subdivisions, although the full faith, credit, and taxing powers of the State or its political subdivisions are pledged for the payment of the same, where the revenues provided for are reasonably sufficient to pay the principal and interest of the obligations incurred. *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Thus revenue bonds for hydroelectric plant are not prohibited.—County revenue bonds, issued to pay for construction of county hydroelectric plant, are not debts within constitutional limitations. *Park v. Greenwood County*, 174 S. C. 35, 176 S. E. 870 (1934).

Where a county, pursuant to statutory authority to build a hydroelectric plant, entered into a contract with the Federal Public Works Administrator providing that the county issue bonds the revenue from which would go for the construction of said plant and that such bonds would be payable only from the revenue of the plant, such bonds do not constitute a debt within the meaning of this provision. *Duke Power Co. v. Greenwood County*, 19 F. Supp. 932 (1937).

Section does not apply to special assessment district.—The limitations contained in this section do not apply in a special assessment district for local improvements. *Sanders v. Greater Greenville Sewer District*, 211 S. C. 141, 44 S. E. (2d) 185 (1947).

Which district is neither county nor township.—The ban of this section does not affect a district specially created as an assessment district, which is neither a county nor a township. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

And as such does not require election on bond issue.—There is no constitutional requirement of a referendum upon the question of the issuance of bonds by a district specially created as an assessment district, since in the absence of pertinent amendment thereto, the Constitution only requires an election upon the bond issues of the State, a city, or a town. *Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. (2d) 88 (1947).

Special local levies may be made for ordinary purposes.—Under this provision, special local levies may be made for ordinary county purposes. *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937).

Legislature is not precluded from issuing bonds.—That this section provides that the General Assembly may not authorize any county or township to issue bonds except for educational purposes, building and repairing roads, buildings, bridges, etc., does not preclude the legislature itself from providing for the issuance of township bonds to construct bridges. *Fripp v. Coburn*, 101 S. C. 312, 85 S. E. 774 (1915).

Without submitting issuance thereof to popular vote.—Under this section, the legislature may direct the issuance of bonds by a county for the purpose of building and repairing roads without submitting the question as to such bond issue to a vote of the electors. There is no provision of the Constitution directly or by necessary implication requiring a referendum on the question of issuing bonds by a county as is required with respect to increasing the public debt of the State or the issuance of bonds by a city or town. *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915); *Graham v. Ervin*, 114 S. C. 419, 103 S. E. 750 (1920).

County need not be sole beneficiary of bond issue.—There is nothing whatever in the Constitution which provides that the legislature shall have no power to authorize a county to levy a tax or issue bonds for any purpose unless the county is the sole beneficiary thereof, to the exclusion of the State or any other body politic and corporate. *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

III. PURPOSES FOR WHICH COUNTY AND TOWN BONDS ISSUED.

"Corporate purposes" in State Constitu-

tion.—When S. C. Const., Art. 10, § 5 and this section are considered together, the purposes for which a county may levy a tax, as specifically stated in this section, are embraced within the term "corporate purposes" as used in S. C. Const., Art. 10, § 5. *Glymph v. Smith*, 170 S. C. 486, 170 S. E. 913 (1933).

Do not contemplate rural sewerage systems.—When the Constitution was written and adopted in 1895, sewerage systems were unknown in rural communities and could not have been in contemplation of the framers when they used the words "ordinary" and "corporate" in describing county purposes for which taxes may be levied and bonds may be issued. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

Designating project as "public purpose" does not make act valid.—The mere fact that a project is denominated by the legislature as a "public purpose" is not within itself sufficient to cure the unconstitutionality of an act authorizing the issuance of bonds by a county for the promotion of such project. *Gentry v. Taylor*, 192 S. C. 145, 5 S. E. (2d) 857 (1939).

Urgency of need is not sole test of public purpose.—It may be true that a public auditorium is not as essential to the public welfare as a hospital, but the urgency of the need is not alone the test by which we are to determine whether a structure is a public building within the meaning of this section. *Cothran v. Mallory*, 211 S. C. 387, 45 S. E. (2d) 599 (1947).

County hospital is "public building."—A proposed hospital for which a township is authorized to issue bonds, and which is to be under the control of public officers, is such a "public building" as is intended to be excepted from this section limiting the power of the legislature to authorize any county or township to levy a tax or issue bonds for any purpose except for educational purposes, to build or repair public roads, buildings, etc. *Battle v. Willcox*, 128 S. C. 500, 122 S. E. 516 (1924).

As is township hospital.—The erection of a hospital from the proceeds of a township bond issue is within the terms of this section to build public buildings. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

The erection and maintenance of a hospital may be lawfully undertaken by a township or a county under a plenary grant of power from the General Assembly, and hence the building essential to the discharge of that function will be deemed a public building in the sense that it will pro-

mote a public service or subserve a public use. *Battle v. Willcox*, 128 S. C. 500, 122 S. E. 516 (1924); *Smith v. Robertson*, 210 S. C. 99, 41 S. E. (2d) 631 (1947).

Or public auditorium.—A public auditorium may be properly classified as a public building within the meaning of that term as used in this section. *Cothran v. Mallory*, 211 S. C. 387, 45 S. E. (2d) 599 (1947).

But not memorial building devoted mainly to private use.—An act calling for the issuance of bonds by a county to build a war memorial building, a substantial portion of which will be devoted to the use of a private organization, cannot be deemed a public building within the contemplation of this section. *Powell v. Thomas*, 214 S. C. 376, 52 S. E. (2d) 782 (1949).

As to airport enlargement before 1945 amendment to this section, see *Gentry v. Taylor*, 192 S. C. 145, 5 S. E. (2d) 857 (1939).

IV. ACTS NOT VIOLATING SECTION.

Act abolishing township highway commission.—An act, abolishing the Bogansville township highway commission and devolving all the duties imposed on them upon the advisory board and the county engineer is not in conflict with this section limiting the purposes for which the General Assembly may authorize counties or townships to issue bonds. *Askew v. Smith*, 126 S. C. 159, 119 S. E. 378 (1923).

Act authorizing construction of cattle barn and show ring.—An act providing for the issuance of bonds for the construction of a cattle barn and show ring will subserve an educational purpose within the contemplation of this section. *Powell v. Thomas*, 214 S. C. 376, 52 S. E. (2d) 782 (1949).

Act authorizing ferry operation by county.—A joint resolution, authorizing a county to levy and issue bonds for construction and operation of a ferry, does not violate this section providing that the legislature has no power to authorize a county to levy a tax or issue bonds for any purpose except for educational purposes, to build

and repair public roads, buildings, and bridges, and for ordinary county purposes. *Poulnot v. Cantwell*, 129 S. C. 171, 123 S. E. 651 (1924).

Act providing for State warehouse commission.—An act, authorizing money to be borrowed on the State's credit for the carrying out of the provisions of the act to establish a State warehouse commission, is not violative of this section providing that the credit of the State shall not be pledged for private purposes. *State v. State Warehouse Comm.*, 92 S. C. 81, 75 S. E. 392 (1912).

Act relating to control of office building site.—An act, conferring on the chamber of commerce for 100 years the exclusive control of a building site for the erection of an office building in which the county was to have the use of certain offices and one half the rent of any surplus space, does not violate this section providing that the credit of the State shall not be pledged or loaned for the benefit of any individual, association, or corporation, and the State shall not become joint owner of, or stockholder in, any such organization. *Chapman v. Greenville Chamber of Commerce*, 127 S. C. 173, 120 S. E. 584 (1923).

Acts passed before this Constitution, exempting part of a county from the operation of the general stock law, are not in conflict with this section prohibiting the General Assembly from authorizing counties or townships to levy taxes except for certain purposes, in that such acts provide for the levying of taxes for the maintenance of fences, which subjects are not within the exceptions of the Constitution, the provisions of the Constitution being prospective. *McCullough v. Graham*, 70 S. C. 63, 49 S. E. 1 (1904).

Statute creating court for part of Oconee County.—See note to S. C. Const., Art. 10, § 5.

Statute providing for probate court fees.—The money collected under § 27-319, in effect a local inheritance tax law, is applied under the county supply act to defray the expenses of constitutional county purposes enumerated in this section. *Anderson v. Page*, 208 S. C. 146, 37 S. E. (2d) 289 (1946).

§ 7. Scrip, certificate, or evidence of State debt.

No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

See Const. 1868, Art. IX, § 10.

Cross reference.—As to submitting the question of increasing the public debt to the qualified electors of the State, see note to S. C. Const., Art. 10, § 11.

Scrip issue is invalid where no prior debt exists.—The issue of revenue bond scrip under an act of March 2, 1872, to relieve the State of all liability on its guaranty indorsed upon railway bonds by authority of an act of September 15, 1868, when, as the statute showed on its face, there was no outstanding liability represented by the guaranty, comes within the prohibition of this section against issuing scrip except for the redemption of an "evidence of indebtedness previously issued," where neither statute purported to be an adjustment of a claim against the State permitted by S. C. Const., Art. 17, § 2. *Lee v. Robinson*, 196 U. S. 64, 25 S. C. 180, 49 L. Ed. 388 (1904).

Meeting debts without taxation does not violate section.—An act, providing in alternative for financing construction of State highway system by issuance by State of evidences of indebtedness for payment of which proceeds of State gasoline tax and motor vehicle tax were pledged, does not violate this section and S. C. Const., Art. 10, § 11, prohibiting increase of State's public debt except for ordinary and current business without first submitting question to qualified electors, since obligations incurred would be met from special fund without taxation. *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929).

Where obligations are to be met by special fund without taxes, this section is not violated. *Bollin v. Graydon*, 177 S. C. 374, 181 S. E. 467 (1935); *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935).

Where special funds are ample for pay-

ment of such debts.—Bonds issued by the state or its political subdivisions, which are payable out of special funds, do not create debts of the State or its political subdivisions, although the full faith, credit, and taxing powers of the State or its political subdivisions are pledged for the payment of the same, where the revenues provided for are reasonably sufficient to pay the principal and interest of the obligations incurred. *Clark v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935); *State v. Lewis*, 181 S. C. 10, 186 S. E. 625 (1936).

Funding bonds may be issued for valid debts.—The State Constitution does not forbid the issue of funding notes or bonds if the funded indebtedness is valid in its inception. *Lott v. Blackwood*, 166 S. C. 58, 164 S. E. 439 (1932).

Incurred in ordinary and current State business.—General Assembly is empowered to provide for funding of indebtedness incurred in ordinary and current business of State. *Lott v. Blackwood*, 166 S. C. 58, 164 S. E. 439 (1932).

State warehouse act receipts are not scrip.—The warehouse receipts authorized to be issued under the State warehouse act (see §§ 69-109 and 69-116 of the Code) are not "scrip, certificates, or other evidence of State indebtedness, within the meaning of this section restricting the issuance of such paper. *State v. State Warehouse Comm.*, 92 S. C. 81, 75 S. E. 392 (1912).

Redemption of "Brown Consol" bonds and stocks.—As to redemption of "Brown Consol" bonds and stocks under a provision in S. C. Constitution of 1868 similar to this section, see *Robertson v. Tillman*, 39 S. C. 298, 17 S. E. 678 (1893).

§ 8. Receipts and expenditures.

An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly, in such manner as may by law be directed.

See Const. 1868, Art. IX, § 11.

Stated in *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

§ 9. Money.

Money shall be drawn from the Treasury only in pursuance of appropriations made by law.

See Const. 1868, Art. II, § 22; Art. IX, § 12.

This section applies to public funds.—Funds of which the county is not the real or equitable owner are not subject to the ban of this section of the Constitution against disbursement without legislative appropri-

tion. It applies to public funds, but does not apply to funds of another or to trust funds. *Foster v. Taylor*, 210 S. C. 324, 42 S. E. (2d) 531 (1947).

And protects taxpayer's rights.—Any tax-

payer, whether one or more, may invoke the aid of the court to prevent the fiscal officers of the State from applying funds in the treasury to any purpose not authorized by law, for besides the fact that such funds are derived from taxes levied and collected by the people of the State, the Constitution expressly provides in this section that "no money shall be drawn from the treasury but in pursuance of an appropriation made by law." *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425 (1895).

Salary of judge may be paid by continuing statute.—Appropriation for payment of judge's salary may be made by permanent continuing statute. *Grimball v. Beattie*, 174 S. C. 422, 177 S. E. 668 (1934).

Without special annual appropriation act.—Unrepealed and unmodified statutes, fixing amount of circuit judge's salary with time, method, and rate of payment thereof, authorized payment by proper officers without further legislation or special annual appropriation act. *Grimball v. Beattie*, 174 S. C. 422, 177 S. E. 668 (1934).

But not by warrant in absence of appropriation therefor.—Comptroller General should not issue warrant for amount claimed by circuit judge as salary in absence of appropriation by law for payment thereof. *Grimball v. Beattie*, 174 S. C. 422, 177 S. E. 668 (1934).

§ 10. Fiscal year.

The Fiscal year shall commence on the First day of July in each year: *Provided*, That the General Assembly at its first regular session after the passage of this amendment, shall be authorized and empowered to make appropriations for governmental purposes for not exceeding eighteen (18) months, and to make such other changes and provisions in law as may be necessary to effectively make the foregoing provision operative: *Provided, further*, That should this Constitution be amended so as to provide for biennial sessions, then the General Assembly shall have power at the first session after the adoption of such an amendment to make appropriations for a period not exceeding two and one-half ($2\frac{1}{2}$) years and thereafter for each succeeding biennium.

1932 (37) 1402; 1933 (37) 591.

§ 11. Public debt; State bonds.

To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State, without first submitting the question as to the creation of such new debt, guaranty, endorsement or loan of its credit to the qualified electors of this State at a general State election; and unless two-thirds of the qualified

Cited in *State v. State Treasurer*, 68 S. C. 411, 47 S. E. 683 (1904), in support of the holding that where there is no permanent, continuing statute or constitutional provision fixing the salary of a circuit judge, and no appropriation has been made therefor, mandamus will not issue to compel the Comptroller General to issue a warrant for salary and the State Treasurer to pay it since the proceeding would be against the State, in which case the court would have no jurisdiction; *State v. Derham*, 61 S. C. 258, 39 S. E. 379 (1901), in support of the holding that the sum of \$100,000, appropriated in the general appropriation act of 1901, is to be distributed according to provisions of act Feb. 19, 1900 (23 St. at Large 409), as amended by act Feb. 19, 1901 [23 St. at Large 753], for pensions of soldier and sailor residents of the State who were in the service of the State or the Confederate States in the late war between the states, and the Comptroller General can only lawfully draw his warrant in favor of the clerk of the circuit court for a pro rata share of pensions going to his county appropriated by such general act; *Fuller v. Payne*, 96 S. C. 471, 81 S. E. 176 (1914); *Dacus v. Johnston*, 180 S. C. 329, 185 S. E. 491 (1936).

electors of this State, voting on the question, shall be in favor of increasing the debt, guaranty, endorsement, or loan of its credit, none shall be created or made. And any debt contracted by the State shall be by loan on State bonds, of amounts not less than fifty dollars each, bearing interest, payable not more than forty years after final passage of the law authorizing such debt. A correct registry of all such bonds shall be kept by the Treasurer in numerical order, so as to always exhibit the number and amount unpaid, and to whom severally made payable. And the General Assembly shall levy an annual tax sufficient to pay the annual interest on said bonds.

See Const. 1868, 16th Amend.

- I. General Consideration.
- II. Where Section Not Violated.
- III. Violations of Section.

I. GENERAL CONSIDERATION.

Scope of section.—In the dissenting opinion to *State v. Moorer*, 152 S. C. 455, 150 S. E. 269 (1929), Justice Townsend said: "The exception from the prohibition in the Sixteenth Amendment to the State Constitution of 1868 and this section of 'ordinary and current business of the State' is in contrast to 'extraordinary expenditures' referred to in the Constitution of 1868, Art. 9, § 7, and shows that the requirement of securing the approval of the electors before creating any new debt or obligation applies to the creation of any new debt or obligation on the part of the State for extraordinary expenditures or expenditures over and above the ordinary and current expenses of the government which annually recur."

Section is intended to protect taxpayers.—The underlying purpose of the constitutional provisions concerning the creation of State debt was that they should serve as a limit of taxation and as a protection to taxpayers, especially those whose property might be subjected to taxation. *Arthur v. Johnston*, 185 S. C. 324, 194 S. E. 151 (1937).

But not to protect State from liability for acts of its agents.—It was not the intention of the framers of the State Constitution to inhibit by this section legislation removing the State's cloak of immunity from liability for the wrongful acts of its officers, agents, and servants. *Ouzts v. State Highway Dept.*, 161 S. C. 21, 159 S. E. 457 (1931).

It forbids creating liability for act for which State not initially liable.—It is beyond the constitutional power of the legislature to create a liability on the part of the State for an act, direct or imputed, for which it was not liable at the time of its commission, such legislative action being in contravention of this section and S. C.

Const., Art. 17, § 2. *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923).

But it does not apply to refunding a valid existing debt. *State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913).

Legislature may authorize county bond issue without election.—This does not prevent the legislature from authorizing issue of bonds by county without submitting the question to an election. Act 26 Stat. 298, authorizing county commissioners of Kershaw County to issue \$40,000 of coupon bonds, empowers commissions to submit question to voters, but also permits them to issue bonds without such submission, without violating this section or S. C. Const., Art. 8, § 7. *Carrison v. Kershaw County*, 83 S. C. 88, 64 S. E. 1018 (1909).

Issue of notes is restricted to those payable from taxes of ensuing year.—The power to issue notes, implied from the provisions of S. C. Const., Art. 10, § 2 and this section, is expressly restricted to the issuance of notes that will be paid out of the tax levy for the ensuing year. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

Legislature may authorize issuance of school bonds.—There being no restrictions on the issuance of bonds by a school district, such as are contained in S. C. Const., Art. 8, § 7, and this section, requiring the State, cities, and towns to submit to the voters questions as to creating and increasing debts thereof, the legislature has plenary power to authorize issuance of bonds by a school district for school purposes. *Zeigler v. Thompson*, 119 S. C. 101, 111 S. E. 880 (1922).

For additional related case, see *Luther v. Wheeler*, 73 S. C. 83, 52 S. E. 874 (1905).

Cited in *Luther v. Wheeler*, 73 S. C. 83, 52 S. E. 874 (1905), in support of the holding that municipal corporations have no authority to borrow money unless such authority is expressly given or unless some duties are imposed or powers conferred on the corporations which could not be exercised at all without borrowing money;

Paris Mountain Water Co. v. Greenville, 110 S. C. 36, 96 S. E. 545 (1918); Powell v. Hargrove, 136 S. C. 345, 134 S. E. 380 (1926); Duncan v. Charleston, 60 S. C. 532, 39 S. E. 265 (1901); Lillard v. Melton, 103 S. C. 10, 87 S. E. 421 (1915); Park v. Greenwood County, 174 S. C. 35, 176 S. E. 870 (1934).

II. WHERE SECTION NOT VIOLATED.

Meeting debts without taxation does not violate section.—See note to S. C. Const., Art. 10, § 7.

Under acts providing for erection of county courthouse, which created courthouse commission and conferred upon it authority to issue bonds payable solely from revenues to be derived from operation of building so erected, county bonds issued for purpose of raising money were held valid, although question of issuance of bonds was not submitted to voters of county, since retirement thereof was provided for by special fund and no property tax could be levied to pay them. *Bollin v. Graydon*, 177 S. C. 374, 181 S. E. 467 (1935).

Where special fund is ample for payment thereof.—Statute providing for issuance of bonds as general obligation of State, for payment of which full faith, credit, and taxing power of State was pledged but which in fact were to be paid from designated sources of revenue, was held not invalid as violative of constitutional prohibition of creation of debt of State without vote of qualified electors of State, where special fund from which payment was to be made might reasonably be expected to be sufficient to meet payment of bonds without resort to property tax. *Crawford v. Johnston*, 177 S. C. 399, 181 S. E. 476 (1935).

Refinancing existing obligations is not creation of "any further debt or obligation" within the meaning of this section. *State v. Stevens*, 173 S. C. 149, 175 S. E. 213 (1934).

The refunding of a valid existing debt does not increase the debt of the State, and therefore needs not the sanction of the qualified electors required by this section of the Constitution before the public debt can be increased. *State v. Blease*, 95 S. C. 403, 79 S. E. 247 (1913); *Williams v. Rock Hill*, 177 S. C. 82, 180 S. E. 799 (1935).

And section is inapplicable to ordinary State business expenses.—Constitutional limitation placed on General Assembly's power to increase public debt does not extend to debt incurred for ordinary and current business of State. *Lott v. Blackwood*, 166 S. C. 58, 164 S. E. 439 (1932).

Or to project excluded from State debt by enacting act.—Obligation of Public Service Authority to complete and operate hydroelectric and navigation project did not create "debt of State" within this constitutional provision against creating public debt without vote of people, irrespective of whether amount available was sufficient to construct project or whether revenues to be derived therefrom would be sufficient to retire obligations, in view of provision in act creating authority and authorizing construction of project and in bonds and mortgage to be issued by authority that no debt of State should be created, nor should full faith, credit, and taxing power of State be pledged to payment of authority's obligations. *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935).

Or to State highway certificates issued for proper purpose.—State highway certificates of indebtedness, when issued for a proper purpose, are not affected by the provisions of this section. *State v. Osborne*, 193 S. C. 158, 7 S. E. (2d) 526 (1940).

Recovery for negligence of State agent is constitutional.—Statute authorizing recovery for injury negligently inflicted by motor vehicle of State Highway Department is not unconstitutional under this section. *Ouzts v. State Highway Dept.* 161 S. C. 21, 159 S. E. 457 (1931).

Pay-As-You-Go Act does not violate section.—The Pay-As-You-Go Act, authorizing reimbursement to counties for moneys advanced for road construction, from special fund consisting of gasoline tax, automobile license tax, and Federal aid, is not violative of this section as incurring "debt" without vote of people. *Briggs v. Greenville County*, 137 S. C. 288, 135 S. E. 153 (1926).

State is responsible for redeemed bond restored to circulation by theft.—This section, forbidding the General Assembly from creating any further debt or obligation without first submitting the question to the electors, does not bar a bona fide holder of a coupon bond of the State from the right to exchange the same for a certificate of stock under the express provisions of Laws 1892, pp. 24, 25, §§ 1, 2, though such bond has theretofore been redeemed by exchange of a certificate of stock but again restored to circulation by theft. *Ehrlich v. Jennings*, 78 S. C. 269, 58 S. E. 922 (1907).

Redemption of "Brown Consols."—As to redemption of "Brown Consol" bonds and stocks under similar provision in the S. C. Constitution of 1868, see *Robertson v. Tillman*, 39 S. C. 298, 17 S. E. 678 (1893).

III. VIOLATIONS OF SECTION.

Revenue bond scrip violates section.—The revenue bond scrip issued by the State of South Carolina under act March 2, 1872 (15 St. at Large 79) is invalid as in contravention of this section, prescribing the mode in which debts shall be contracted by the State, and also because the certificates are in law and in fact bills of credit issued in violation of U. S. Const., Art. 1, § 10. *Robinson v. Lee*, 122 F. 1012 (1903), affirmed in 196 U. S. 64, 25 S. Ct. 180, 49 L. Ed. 388 (1904).

As does bond issue under 1912 State warehouse act.—The State warehouse act [1912 (27) 707] in so far as it provides for an issuance of bonds and an increase of the public debt without first submitting the question to the qualified voters, violates

this section prohibiting an increase in the State debt without the consent of the voters except for the "ordinary" and current business of the State, the building of warehouses not being "ordinary" State business and the bonds not being intended to be for a debt of the State. *State v. State Warehouse Comm.*, 92 S. C. 81, 75 S. E. 392 (1912).

And State credit cannot be pledged in aid of hydroelectric project.—In *Clarke v. South Carolina Public Service Authority*, 177 S. C. 427, 181 S. E. 481 (1935), the court held that the full faith, credit, and taxing powers of the State or any of its political subdivisions could not be pledged, either directly or contingently, for payment of obligations issued by Public Service Authority in construction of hydroelectric and navigation project.

§ 12. Safe-keeping of public funds; embezzlement thereof felony; General Assembly may remove disability.

Suitable laws shall be passed by the General Assembly for the safe-keeping, transfer and disbursement of the State, County and school funds; and all officers and other persons charged with the same shall keep an accurate entry of each sum received, and of each payment and transfer, and shall give such security for the faithful discharge of such duties as the General Assembly may provide. And it shall be the duty of the General Assembly to pass laws making embezzlement of such funds a felony, punishable by fine and imprisonment, proportioned to the amount of the deficiency or embezzlement, and the party convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however*, That the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

See Const. 1868, Art. IX, § 15.

Verdict on conviction must state amount embezzled.—In a prosecution for embezzlement of public funds, the jury should be explicitly instructed, in the event of conviction, to state in their verdict the amount embezzled. Without such finding, the court is not possessed of information essential for determining the measure of punishment. *State v. Johnson*, 186 S. C. 202, 195 S. E. 329 (1938).

No mathematical relationship between amount embezzled and imprisonment therefor.—This section of the Constitution, and §§ 16-363 and 16-364 of the Code, do not require a mathematical relationship between the amount embezzled and the time imposed as punishment therefor. *State v. Bikle*, 180 S. C. 400, 185 S. E. 753 (1936).

Stated in *State v. Gregory*, 198 S. C. 98, 16 S. E. (2d) 532 (1914).

§ 13. One assessment for all taxes.

The General Assembly shall provide for the assessment of all property for taxation; and State, county, township, school, municipal and all other taxes shall be levied on the same assessment which shall be that made for State taxes; and the taxes for the subdivisions of the State shall be levied and collected by the respective fiscal authorities thereof.

- I. General Consideration.
- II. Application of Section.

Cross Reference.

As to taxes as debt due the State and as first lien upon property, see § 65-2701.

I. GENERAL CONSIDERATION.

Section confers administrative powers in tax collection.—This section, to the effect that the taxes for the subdivisions of the State shall be levied and collected by the respective fiscal authorities thereof, confers administrative power in the collection of the tax without reference to its creation. *Southern Ry. Co. v. Kay*, 62 S. C. 28, 39 S. E. 785 (1901).

Legislature may prescribe duties of tax commission.—Under this section, S. C. Const., Art. 4, § 24, and S. C. Const., Art. 11, § 4, the General Assembly has the power to prescribe the duties and powers of county auditors, county treasurers, the Comptroller General, and the State tax commission. *Bank of Johnston v. Prince*, 136 S. C. 439, 134 S. E. 387 (1926).

Assessment is prerequisite to legal tax.—See note to S. C. Const., Art. 1, § 6.

And only one assessment shall be made duty of municipal authorities to adopt the for all purposes.—It appears from this section and from the decided cases that only one assessment of property shall be made for all taxable purposes, and that it is the assessment as placed upon the books of the county auditors. *Breedin v. Manning*, 168 S. C. 69, 167 S. E. 2 (1932).

All taxes must be levied on same valuation.—This section, providing that all taxes shall be levied on the same "assessment" which shall be made for State taxes, requires all taxes to be levied on the same valuation. *Southern Ry. Co. v. Kay*, 62 S. C. 28, 39 S. E. 785 (1901).

Bonded debt must be determined according to assessment under section.—In determining whether the bonded debt of a city exceeds the percent of the assessed valuation allowed by law, the computation, under this section, must be based on the assessment for State and county purposes only. *Todd v. Laurens*, 48 S. C. 395, 26 S. E. 682 (1897).

Cited in New York Life Ins. Co. v. Bradley, 83 S. C. 418, 65 S. E. 433 (1909), in support of the holding that a tax on the gross income in the State of foreign insurance companies for the preceding year, not being limited to property in the State, is unconstitutional as taking property without due process; *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900), in support of the hold-

ing that a statute requiring that all landowners in certain counties should during the months of May and August of each year remove from the running streams of water on their land all trash, trees, rafts, and timbers therein, and making a violation of such requirement a misdemeanor, if to be considered as a measure for taxation, is unconstitutional; *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926), in support of the holding that acts vesting the county board of education of Dillon County with power to tax for support of high schools are not violative of constitutional provisions intended to limit public debt; *Fuller v. Payne*, 96 S. C. 471, 81 S. E. 176 (1914); *Lillard v. Melton*, 103 S. C. 10, 87 S. E. 421 (1915); *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51 (1937).

II. APPLICATION OF SECTION.

Method of assessment different from auditor's books is invalid.—Acts of the legislature permitting a town to adopt method of tax assessment by which taxes for town purposes are different from auditor's books are unconstitutional. *Breedin v. Manning*, 171 S. C. 295, 172 S. E. 120 (1933).

Legislature may direct bond issue to build bridge.—This section, declaring that the General Assembly shall provide for the assessment of all property for taxation and that State, county, township, etc., and all other taxes shall be levied on the same assessment, does not preclude the legislature from directing the issuance of township bonds to build a bridge, the regular assessment not being interfered with. *Fripp v. Coburn*, 101 S. C. 312, 85 S. E. 774 (1915); *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

And may levy tax without levy by county authorities.—A levy of a county tax by the legislature, without levy by county authorities, is valid. *Dickson v. Burckmyer*, 67 S. C. 526, 46 S. E. 343 (1903).

Change of county assessment does not impliedly change municipal assessment.—In proceedings involving refund of municipal taxes, a change by the State tax commission in assessment for State and county purposes does not impliedly change the assessment of municipal taxes so as to require the municipality to make refund, in view of §§ 65-2681 to 65-2685, on the ground that there could be only one assessment of State, county or other taxes, and that municipal taxes are levied on same assessment made for State taxes under this section and § 65-1503. *Columbia v. Peurifoy*, 148 S. C. 349, 146 S. E. 93 (1928).

Drainage acts assessing lands to be drained.—See note to S. C. Const., Art. 10, § 3.

For act providing for valid licensing of

coin-operated devices in accordance with the provisions of this section, see *Carolina Music Co. v. Query*, 192 S. C. 308, 6 S. E. (2d) 473 (1939).

§ 13-A. Assessments for improvement of bridges and highways, Beaufort County.

The General Assembly may authorize the corporate authorities of the several counties of the State to levy an assessment upon abutting property and property adjacent within ten miles in proportion to the benefits derived therefrom for the purpose of paying for permanent improvement of bridges, public roads and highways thereof: *Provided*, That said improvement shall be ordered only upon the written consent of one-half of the owners of the property abutting upon any such bridge, public road, or highway proposed to be improved, and upon condition that said assessment of abutting property owners shall not exceed one-half of the cost of such improvements. *Provided*, That the provisions of this Section shall apply only to Beaufort County.

1922 (32) 1331; 1923 (33) 69.

Coastal highway act does not violate section. — The coastal highway act creating road district for certain counties is not in violation of the State Constitution for its failure to follow this section and S. C. Const., Art. 10, § 20, relating to plan of as-

essment in two counties included in district, since these sections did not deprive the legislature of the right to levy ad valorem taxes for road improvements. *Evans v. Beattie*, 137 S. C. 496, 135 S. E. 538 (1926).

§ 14. Columbia, Greenville, Manning and Spartanburg may levy assessment on abutting property.

The General Assembly may authorize the corporate authorities of the Cities of Greenville, Spartanburg and Columbia, and the Town of Manning, to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of two-thirds of the owners of the property abutting upon the street, sidewalk or part of either proposed to be improved, and upon condition that said corporate authorities shall pay at least one-half of the costs of such improvements.

1910 (26) 1065; 1911 (27) 225.

Provided, further, That the city of Greenville may be authorized, upon the written consent of the owners of two-thirds ($\frac{2}{3}$) of the frontage of the property abutting upon the street, roadway, alleyway, sidewalk or part of either, proposed to be improved, to levy an assessment upon the abutting property for the entire cost of such improvements, including lateral pipe lines; the corporate authorities, however, to pay the cost of improving the intersection of any such streets, roadways, alleyways or sidewalks: *Provided, further*, That said City of Greenville may be authorized and empowered without the necessity of an election to issue improvement certificates or bonds in an amount not exceeding the aggregate amount of the cost of such improvements, pledging the assessments as security therefor, and such certificates or bonds shall not be deemed a part of the bonded indebtedness within the meaning of the

constitutional limitation: *Provided, further*, Said City of Greenville may, at its option, assess only a portion of the cost against abutting property owner, itself paying the remainder.

1928 (35) 1691; 1929 (36) 39.

Provided, still further, that crushed stone or slag laid on a prepared clay or top-soil base and bound securely by some bituminous material in such a manner as to form a durable hard surface, by methods commonly termed "surface treatment", shall be considered and construed to be a type of permanent improvement permitted or authorized hereunder for use on the streets and roadways within the present or enlarged corporate limits of the city of Greenville.

1938 (40) 1830; 1939 (41) 69.

Making assessment lien a charge on land is in rem proceeding.—Procedure by which assessment lien becomes charge on land is proceeding in rem and, like taxes, is collectible without summons to court and regardless of personal interests or contracts. *Beatty v. Wittekamp*, 171 S. C. 326, 172 S. E. 122 (1933).

Unenforced tax lien does not prevail over subsequent assessments.—Where the United States Government for many years makes no effort to enforce its income tax lien and where in the meantime properties involved are specifically assessed for paving improvements, and taxes are assessed in favor of the county and the city against said properties, it would be inequitable in such circumstances to deny to these political units the right to collect their taxes in the face of the Federal Government's unexplained long delay and in the face of the fact that paving assessments legally made against some of the properties have become specific liens. *United States v. Woodside*, 34 F. Supp. 281 (1940), modified in 118 F. (2d) 963 (1941).

Greenville may assess costs of street improvements to abutting property.—The 1929 amendment to this section authorizing city of Greenville, upon consent of owners representing two thirds of frontage of property

abutting upon street to lay pavement and assess and collect total costs, was held to authorize city to pave its streets at total cost to abutting land without necessity of enabling act. *Beatty v. Wittekamp*, 171 S. C. 326 172 S. E. 122 (1933).

In *Beatty v. Wittekamp*, 171 S. C. 326, 172 S. E. 122 (1933), a mortgage lien effective in 1929 was held inferior to city of Greenville's street paving assessment lien by virtue of provisions in that part of this section ratified in 1911, though such mortgage was executed prior to 1929 constitutional amendment to this section relating to city's power to levy assessment liens and notwithstanding statute made no special provision for superior lien.

Election requirements for street improvements are inapplicable to Columbia.—Sections 47-1341, 47-1342, 47-1349, 47-1350, 47-1352, 47-1356 and 47-1357, requiring election as means of procuring street improvements, are inapplicable to city of Columbia in view of this section authorizing specified cities, including Columbia, to order improvements on petition of owners of abutting property. *Ballentine v. Columbia*, 132 S. C. 88, 129 S. E. 82 (1925).

Stated in Blake v. Spartanburg, 185 S. C. 398, 194 S. E. 124 (1937); *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

§ 14a. Assessments on abutting property in Charleston and Beaufort.

The General Assembly may authorize the corporate authorities of the Cities of Charleston and Beaufort to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets, and sidewalks immediately abutting such property, and in the City of Charleston to pay for the permanent improvement of intersection of streets and for placing curbing and for laying drains abutting such property: *Provided*, That said improvements be ordered only upon the written consent of two-thirds of the owners of the property abutting upon the street, sidewalk, or part of either,

proposed to be improved, and upon condition that said corporate authorities shall pay at least one-half of the costs of such improvements. But this proviso shall not apply to the City of Charleston, in which city the City Council shall have the right to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets, the intersection of streets and sidewalks, and to pay for curbing of streets and for drains abutting such property without the consent of the owner of the property abutting upon the streets, intersection of streets, sidewalks, or a part of either, proposed to be improved, or where curbing is to be placed or drains laid, and without paying for any of the costs of such improvements.

1912 (27) 1096; 1913 (28) 334; 1917 (30) 664; 1919 (31) 75.

Provided, further, That in the City of Charleston, permanent improvements for any street or sidewalk shall be considered and construed to be such improvements as the City Council of Charleston, in its judgment, shall determine to be durable, taking into account the nature of the street foundation, the volume of pedestrian and vehicular traffic passing over or expected to pass over the said street or sidewalk, and the wearing quality of construction materials.

Provided, further, That the City Council of Charleston, at its option, may accept assistance in the improvement of any street or sidewalk from any other governmental subdivision or unit or other agency, and thereupon shall levy upon the abutting property only such portion of the cost of such improvement as is not paid by the other governmental subdivision or unit or agency.

1944 (43) 1573; 1945 (44) 6.

Prior benefits may not be included in assessment.—Under this section, authorizing the Charleston city council to levy on abutting property assessments for improvements to streets “proposed to be improved” or where curbing is to be placed or drains laid, the city council has no authority to include in the assessment benefits to a property owner from an adequate drain theretofore installed. *Sullivan v. City Council*, 123 S. C. 91, 116 S. E. 104 (1923).

Objection under section is waived by inaction. — Objections that a petition, filed with the city clerk praying for an election

on the question of issuing bonds for street, sidewalk, and drain improvements, as authorized by this section, was not signed by a majority of the freeholders of the city are waived by failure of taxpayers to file written protest or to take proper proceedings in court after the election has been ordered and proper notice thereof given prior to the holding of the election. *Sullivan v. City Council*, 123 S. C. 91, 116 S. E. 104 (1923).

Stated in *Marshall v. Rose*, 213 S. C. 428, 49 S. E. (2d) 720 (1948).

§ 15. Tax abutting property in Chester, Woodruff, Gaffney and Georgetown for permanent improvements.

The General Assembly may authorize the corporate authorities of the towns of Gaffney and Woodruff and the cities of Chester and Georgetown to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks, or streets or sidewalks, immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of a majority of the owners of the property

abutting upon the streets or sidewalks, or part of either proposed to be improved, and upon the condition that the corporate authorities shall pay at least one-half of the costs of such improvements.

1912 (27) 1097; 1913 (28) 336.

§ 15(1). Chester may levy assessments against abutting property for certain improvements.

The General Assembly may authorize the City of Chester, upon the written consent of the owners of two-thirds of the frontage of the property abutting upon the street, roadway, alleyway, sidewalk or part of either, proposed to be improved, to levy an assessment upon the abutting property for the entire cost of such improvements, including lateral pipe lines; the corporate authorities, however, to pay the cost of improving the intersection of any such streets, roadways, alleyways or sidewalks. *Provided*, that the said City of Chester may be authorized and empowered without the necessity of an election to issue improvement certificates or bonds in an amount not exceeding the aggregate amount of the cost of such improvements, pledging the assessment as security therefor, and such certificates or bonds shall not be deemed to be a part of the bonded indebtedness of said city within the meaning of any constitutional limitation. *Provided, further*, that the said City of Chester may, at its option, assess only a portion of the cost against abutting property owners, itself paying the remainder. *Provided, further*, that crushed stone or slag laid on a prepared clay or topsoil base and bound securely by some bituminous material in such a manner as to form a durable hard surface, by methods termed 'surface treatment', shall be considered and construed to be a type of permanent improvement permitted or authorized hereunder for use on the streets and roadways within the present or enlarged corporate limits of the City of Chester.

1946 (44) 2668; 1947 (45) 91.

§ 15(1)(a). Chester may extend water and sewer service; levy assessments for costs thereof.

The General Assembly may authorize the City of Chester, upon the written consent of any property owner, within or without the corporate limits of said City, to extend water and sewer service to said property owner by constructing water and sewer lines to said property and to levy an assessment upon said property, which assessment shall constitute a lien upon said property, for the entire cost of extending such water and sewer lines. That the said city may be authorized and empowered, without the necessity of any election, to issue water and sewer bonds in an amount not exceeding the aggregate amount of the cost of extending such water and sewer lines, pledging the assessment as security therefor, and such certificate or bonds shall not be deemed a part of the bonded indebtedness of said city within the meaning of any constitutional limitation. *Provided*, that the said city of Chester may, at its option, assess only a portion of the cost of extending water and sewer lines within the corporate limits, itself paying the remainder.

1946 (44) 2669; 1947 (45) 93.

§ 15a. Latta and Dillon may assess abutting property.

The General Assembly may authorize the corporate authorities of the towns of Latta and Dillon to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks, or streets or sidewalks, immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of two-thirds of the owners of property abutting upon the streets or sidewalks, and upon the condition that the corporate authorities shall pay at least one-half of the cost of such improvements.

1914 (28) 956; 1915 (29) 69.

§ 16. Assessment of abutting property owners by Pendleton.

The General Assembly may authorize the corporate authorities of the Town of Pendleton to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks, or streets or sidewalks, immediately abutting such property: *Provided*, That said improvements be ordered only upon written consent of two-thirds of the owners of the property abutting upon the streets, sidewalks, or parts of either, proposed to be improved, and upon condition that said corporate authorities shall pay at least one-half of the cost of such improvement.

1918 (30) 1141; 1919 (31) 163; 1920 (31) 711.

§ 16. Sumter, Darlington, Belton and Walhalla may assess abutting property.

The General Assembly may authorize the corporate authorities of the Cities of Sumter and Darlington, and the Towns of Walhalla and Belton to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks, or streets or sidewalks, immediately abutting said property: *Provided*, That said improvements shall be ordered only upon the written consent of one-half of the owners of the property abutting upon the street, sidewalk, or parts of either, proposed to be improved, and upon condition that said assessment upon abutting property owners shall not exceed one-half of the cost of such improvements, except in the city of Sumter, where the corporate authorities shall pay at least one-third of the cost of such improvements and the abutting property owners not exceeding two-thirds of the cost thereof.

1913 (28) 387; 1915 (29) 59.

§ 16. Florence, Orangeburg and Landrum may assess abutting property for permanent improvements.

The General Assembly may authorize the corporate authorities of the Cities of Florence and Orangeburg, and the Town of Landrum, to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets, immediately abutting upon such property: *Provided*, That the said improvements be ordered only on the written consent of a majority of the owners of the property abutting upon the streets, sidewalk, or part of either, proposed to be improved, and upon the condition that said

corporate authorities shall pay at least one-third of the costs of said improvements.

1914 (28) 950; 1915 (29) 88.

Cross reference.—As to assessments in incorporated cities and towns for permanent improvements, see S. C. Const., Art. 10, § 17 (the first § 17 of this Article).

Construction. — This constitutional amendment and the act enacted pursuant thereto do not vary from the general constitutional provision in S. C. Const., Art. 10, § 17 (the first § 17 of this Article) and §§ 47-1341 and 47-1342 of the Code, enacted pursuant thereto, save in minor details as to proportionate costs to be assumed by the municipality and the consent of the requisite proportion of citizens. The construction of the two constitutional amend-

ments and acts are subject to the same rules. *Orangeburg v. Southern Ry. Co.*, 45 F. Supp. 734 (1942), affirmed in 134 F.(2d) 890 (1943).

Orangeburg may provide for payment of assessment.—Under the terms of this section, the city of Orangeburg has full power to provide by ordinance for the terms and methods of payment of assessment. *Orangeburg v. Southern Ry. Co.*, 55 F. Supp. 167 (1944).

Cited in *Southern Ry. Co. v. Orangeburg*, 145 F. (2d) 725 (1944); *Orangeburg v. Southern Ry. Co.*, 214 S. C. 485, 53 S. E. (2d) 330 (1949).

§ 16. Anderson, Greenwood, Bennettsville, Timmons ville and Honea Path may assess abutting property.

The General Assembly may authorize the Cities of Anderson, Greenwood, and Towns of Bennettsville, Timmons ville and Honea Path, to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks immediately abutting such property: *Provided*, That said improvements be ordered only upon written consent of a majority of the owners of property abutting upon the street, sidewalk, or part of either, proposed to be improved, and upon condition that said corporate authorities shall pay at least one-half of the cost of such improvements.

1914 (28) 969; 1915 (29) 78.

Cross reference.—As to assessments in incorporated cities and towns for permanent improvements, see S. C. Const., Art. 10, § 17 (the first § 17 of this Article).

Town is not exempt from limitations of S. C. Const., Art. 8, § 7.—The provisions of this section do not exempt a town from limitations upon bonded indebtedness imposed by S. C. Const., Art. 8, § 7. *Rose v. Baskins*, 178 S. C. 69, 182 S. E. 153 (1935).

Assessment is not debt "due to public" under § 19-476.—This section, authorizing

municipality to levy assessment on abutting property for purpose of paying for permanent improvements on streets and sidewalks, does not create a personal liability against a property owner for amount of assessment so as to constitute such assessment a debt due the public and entitled to priority under § 19-476 out of assets in hands of administrator after owner's death. *Weatherly v. Medlin*, 141 S. C. 290, 139 S. E. 633 (1927).

§ 17. Assessments in incorporated cities and towns for permanent improvements.

The General Assembly may authorize the corporate authorities of any or all incorporate cities and towns in the State to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of two-thirds of the owners of the property abutting upon the street, or sidewalks or part of

either, proposed to be improved, and upon condition that said corporate authorities shall pay at least one-half of the cost of such improvements.

1918 (30) 1129; 1919 (31) 37.

This constitutional provision is self-executing and subsequent legislation was wholly unnecessary as far as creating the right to impose paving assessments is concerned. *Cheraw v. Turnage*, 184 S. C. 76, 191 S. E. 831 (1937).

And it is similar to third § 16 of this Article.—*Orangeburg v. Southern Ry. Co.*, 45 F. Supp. 734 (1942) affirmed in 134 F.(2d) 890 (1943).

Lien is created by State Constitution.—The imposition of the paving assessment cannot violate any provision of the State Constitution for the lien is created by the Constitution itself. *Cheraw v. Turnage*, 184 S. C. 76, 191 S. E. 831 (1937).

Town may not rely on dubious anticipated contribution.—Where a town had no means of paying for its required share of the cost of a contemplated street improvement other than a contribution thereto which it expected from the Works Progress Administration, and the latter agency was under no obligation to complete the project, there was a failure of compliance by the town with this constitutional provision. *Coward v. Nettles*, 197 S. C. 84, 14 S. E. (2d) 551 (1941).

Cited in *Rose v. Baskins*, 178 S. C. 69, 182 S. E. 153 (1935).

§ 17. Fort Mill may assess abutting property.

The General Assembly may authorize the corporate authorities of the Town of Fort Mill to levy an assessment upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks, or streets or sidewalks, immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of two-thirds of the owners of property abutting upon the streets or sidewalks, and upon the condition that the corporate authorities shall pay at least one-half of the cost of such improvements.

1914 (28) 961; 1915 (29) 75.

§ 18. Assessments on abutting property in Clinton and Easley.

The General Assembly may authorize the Town of Clinton and the City of Easley to levy an assessment upon abutting property to pay for permanent improvements on streets and sidewalks immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of a majority of the owners of property abutting upon the street, sidewalk, or part of either, to be improved; and, upon the further condition that the corporate authorities shall pay at least one-half of the costs of such improvements.

1916 (29) 1245; 1917 (30) 226.

Abutting railroad property is not exempt.—Railroad property abutting on street is not exempt from assessment for street improvements under this section, notwith-

standing use of such property for railroad purposes. *Atlanta & C. A. L. Ry. Co. v. Easley*, 117 S. C. 494, 109 S. E. 285 (1921).

§ 19. Assessment upon abutting property for street improvements in Greer.

The General Assembly may authorize the Town of Greer to levy an assessment upon abutting property to pay for permanent improvements on streets and sidewalks immediately abutting such property: *Provided*, That said improvements be ordered only upon the written consent of a majority of the owners of property abutting upon the street, sidewalk, or part of either, to be improved, and upon the further condition that the corporate authorities shall pay at least one-half of the costs of such improvement.

1921 (32) 629; 1924 (33) 991.

§ 20. Assessments in County of Florence for highway improvement.

The General Assembly may authorize the corporate authorities of the County of Florence to levy an assessment upon property within a radius of one and one-half ($1\frac{1}{2}$) miles of any public road or highway to be improved, for the purpose of paying for permanent improvements on the roads and highways: *Provided*, That no more than one-third ($\frac{1}{3}$) of the costs of any such improvements shall be so assessed and that of the amount so assessed two-thirds ($\frac{2}{3}$) shall be assessed upon the property within a radius of three-fourths ($\frac{3}{4}$) of a mile from the road or highway improved and one-third ($\frac{1}{3}$) upon other property: *And provided, further*, That such special assessments shall be levied or apportioned in accordance with the assessed valuation of the property to be assessed.

1920 (31) 1728; 1921 (32) 90.

§ 21. Paving assessments in Forest Acres in Richland County.

The General Assembly may authorize the Town of Forest Acres in Richland County to levy an assessment upon abutting property for the purpose of paying for paving of streets, sidewalks, gutters, street lighting, and other permanent improvements on streets and sidewalks immediately abutting such property. *Provided* that said improvements be ordered only upon the written consent of eighty (80%) per cent of the owners of property abutting upon the streets and sidewalks. *Provided, further*, that the eighty (80%) per cent of the property owners signing the written consent must also own at least eighty (80%) per cent of the property abutting upon the streets and sidewalks involved.

1950 (46) 3479; 1951 (47) 231.

ARTICLE XI.

EDUCATION.

§ 1. State Superintendent of Education.

The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be elected for the term of two years by the qualified electors of the State, in such manner and at such time as the other State officers are elected; his powers, duties and compensation shall be defined by the General Assembly.

See Const. 1868, Art. X, § 1.

Cross references. — See S. C. Const., Art. 4 § 24, which was amended by 1926 Acts [1926 (34) 959] so as to increase the time of office of the State Superintendent of Education to four years. For parallel Code section, see § 21-21.

Laws relating to graded schools are not repealed.—The provisions of this Article do not repeal the laws applying to the special school districts and graded schools in this

State, and Acts 19 Stat. 1050 and 20 Stat. 935 are not unconstitutional. Voting for a school tax in a special school district viva voce is not in violation of the provisions of the Constitution as to elections. *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900).

Cited in *Varn v. Beattie*, 171 S. C. 424, 172 S. E. 442 (1934).

§ 2. State Board of Education.

There shall be a State Board of Education, composed of the Governor, the State Superintendent of Education, and not exceeding seven persons to be appointed by the Governor every four years, of which Board the Governor shall be Chairman, and the State Superintendent of Education, Secretary. This Board shall have the regulation of examination of teachers applying for certificates of qualification, and shall award all scholarships, and have such other powers and duties as may be determined by law. The traveling expenses of the persons to be appointed shall be provided for by the General Assembly.

See Const. 1868, Art. X, § 2.

Cross references. — For parallel Code sections, see §§ 21-41 and 21-44.

§ 3. School officers.

The General Assembly shall make provision for the election or appointment of all other necessary school officers, and shall define their qualifications, powers, duties, compensation and terms of office.

Section is not affected by S. C. Const., Art. 3, § 34.—This section is not affected by the provisions contained in S. C. Const., Art. 3, § 34. *DeHay v. Com'rs*, 66 S. C. 229, 44 S. E. 790 (1903).

County boards may be delegated power to alter school districts.—An act authorizing county boards of education to alter lines of school districts is not in violation of this section, there being a marked difference between the imposition of a duty and the dele-

gation of a legislative power. *Waterloo School District v. Cross Hill School District*, 106 S. C. 292, 91 S. E. 257 (1917).

And to levy taxes for support of school.—An act providing for division of a county into high school districts and vesting county board of education with power to levy taxes for support of high school is valid under this section. *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

§ 4. Salaries of school officers and county treasurer.

The salaries of the State and County school officers and compensation of County Treasurers for collecting and disbursing school moneys shall not be paid out of the school funds, but shall be otherwise provided for by the General Assembly.

Legislature controls duties of county treasurers and other officers.—Under this section, S. C. Const., Art. 4, § 24 and Art. 10, § 13, the General Assembly has power to prescribe duties and powers of county audi-

tors, county treasurers, the Comptroller General, and the State tax commission. *Bank of Johnston v. Prince*, 136 S. C. 439, 134 S. E. 387 (1926).

§ 5. Free public schools; school districts.

The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years, and for the division of the Counties into suitable school districts.

1915 (29) 598; 1917 (29) 669; 1918 (31) 726; 1919 (31) 288; 1922 (32) 1544; 1923 (33) 6; 1928 (35) 1693; 1929 (36) 231; 1930 (36) 1215; 1930 (36) 1407; 1931 (37) 101; 1931 (37) 106; 1936 (39) 1422; 1937 (40) 82; 1944 (43) 1576; 1945 (44) 11; 1948 (45) 2283; 1948 (45) 2391; 1948 (45) 2510; 1949 (46) 23; 1949 (46) 42; 1949 (46) 70; 1949 (46) 1475; 1950 (46) 2671; 1951 (47) 14; 1951 (47) 25.

See Const. 1868, Art. IX, § 3.

This section must be construed with S. C. Const., Art. 3, § 34, subdiv. (11). *State v. McCaw*, 77 S. C. 351, 58 S. E. 145 (1907).

Few restrictions are put on legislature as to public education.—This section, as now amended, places very few restrictions on the power of the General Assembly in the general field of public education. It is required to provide for liberal system of free public schools, but the details are left to its discretion. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

And no hiatus is intended in education laws.—This section shows conclusively that the framers of the S. C. Constitution of 1895 intended that there should be no hiatus in the laws of this Commonwealth in regard to the matter of education in all its ramifications. *De Hay v. Com'rs*, 66 S. C. 229, 44 S. E. 790 (1903).

Section does not fix number of schools for county.—This section directs that the counties shall be divided into suitable school districts, but nothing is said therein as to the number or character of schools to be established or maintained in these districts, and these things are left to the legislative power. *Hildebrand v. High School District*, 138 S. C. 445, 136 S. E. 757 (1927); *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

And General Assembly may adopt different school systems.—There is nothing in the State Constitution which prohibits the General Assembly from adopting other systems of schools, and accordingly, the General Assembly has from time to time enacted school laws, some general in their nature and others special. *Holler v. Rock Hill School District*, 60 S. C. 41, 38 S. E. 220 (1901).

County boards may alter lines of school district.—Under this section, the county boards of education could alter the lines of any school district that had not been created

by act of legislature, and after an amendment in 1900 to the act governing such boards, the county boards could alter the lines of any school district, whether or not created by an act of the legislature. *Waterloo School District v. Cross Hill School District*, 106 S. C. 292, 91 S. E. 257 (1917).

School district may assess scholars.—An act chartering a school district with power to assess scholars, as supplementary tuition fees, for such sums as should be necessary to meet the expense of the school attended by them is not in conflict with the constitutional provision for free public schools. *Holler v. Rock Hill School District*, 60 S. C. 41, 38 S. E. 220 (1901).

Liquidation of prior district's debt by enlarged school district.—An act enlarging a school district, and providing, impliedly at least, that the enlarged district shall bear its just proportion of any tax for the liquidation of bonds of the old district, does not violate this section. *Burriss v. Brock*, 95 S. C. 104, 79 S. E. 193 (1913).

For additional related case, see *Murph v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907).

Quoted in *Craig v. Bell*, 211 S. C. 473, 46 S. E. (2d) 52 (1948).

Stated in *Gamble v. DuBose*, 215 S. C. 252, 54 S. E. (2d) 803 (1949).

Cited in *State v. Rice*, 32 S. C. 97, 10 S. E. 833 (1890); *Shelor v. Pace*, 151 S. C. 99, 148 S. E. 726 (1929); *Sherbert v. School District*, 169 S. C. 191, 168 S. E. 391 (1933); *Kearse v. Lancaster County Supt. of Ed.*, 172 S. C. 59, 172 S. E. 767 (1934); *Martin v. School District*, 57 S. C. 125, 35 S. E. 517 (1900); *State v. McCaw*, 77 S. C. 351, 58 S. E. 145 (1907); *Dove v. Kirkland*, 92 S. C. 313, 75 S. E. 503 (1912); *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926); *Hildebrand v. High School District*, 138 S. C. 445, 136 S. E. 757 (1927); *Kyzer v. Dent*, 163 S. C. 403, 161 S. E. 690 (1931).

§ 6. Enrollment; trustees; poll tax; supplementary tax.

The General Assembly shall define "enrollment." Not less than three trustees for each school district shall be selected from the qualified voters and taxpayers therein, in such manner and for such terms as the General Assembly may determine, except in cases of special school districts now existing, where the provisions of law now governing the same shall remain until changed by the General Assembly: *Provided*, The manner of the selection of said trustees need not be uniform throughout the State.

There shall be assessed on all taxable polls in the State between the ages of twenty-one and sixty years (excepting Confederate soldiers above the age of fifty years), an annual tax of one dollar on each poll the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected.

Any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.

1938 (40) 1912; 1939 (41) 8.

See Const. 1868, Art. X, § 5.

School trustees are legislative officers.—Under this section and § 21-221 of the Code, school trustees are legislative officers whose terms may be ended or extended at the will of the legislature. *Walpole v. Wall*, 153 S. C. 106, 149 S. E. 760 (1929).

And their selection does not have to be uniform.—A statute respecting election of school trustees of Spartanburg County is not invalid in excepting from its provisions district comprising city of Spartanburg, since this section provides that the manner of selection of school trustees need not be uniform throughout the State. *Becknell v. Waters*, 156 S. C. 77, 152 S. E. 816 (1930).

School funds may not be commingled without regard to source.—That portion of an act which contemplated the commingling of all school funds collected from any source, and the expenditure of these funds by the county board without reference to the district in which they were collected, was held to violate this provision of the Constitution. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

School district may not levy additional tax

without permission.—Under the provisions of this section, the right of a school district to levy an additional tax for the support of its schools is not absolute, but is only permissive and is subject to authorization by the General Assembly. *Moseley v. Welch*, 209 S. C. 19, 39 S. E. (2d) 133 (1946).

As to suit by county for county school fund, see *Aiken County v. Murray*, 35 S. C. 508, 14 S. E. 954 (1892).

For additional related cases, see *Murphy v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907); *Shelor v. Pace*, 151 S. C. 99, 148 S. E. 726 (1929); *Dickson v. Burckmyer*, 67 S. C. 526, 46 S. E. 343 (1903); *Asbill v. Martin*, 84 S. C. 271, 66 S. E. 297 (1909); *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

Quoted in *Craig v. Bell*, 211 S. C. 473, 46 S. E. (2d) 52 (1948).

Cited in *Rogers v. Marlboro County*, 32 S. C. 555, 11 S. E. 383 (1890); *State v. Derham*, 54 S. C. 349, 32 S. E. 418 (1899); *Holler v. Rock Hill School District*, 60 S. C. 41, 38 S. E. 220 (1901); *Hay v. Leonard*, 212 S. C. 81, 46 S. E. (2d) 653 (1948).

§ 7. Separate schools.

Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race.

See Const. 1868, Art. X, § 10.

Cross reference.—For parallel Code section, see § 21-751.

County may be divided into high school districts.—Acts providing for division of Dillon County into high school districts do

not violate this section. *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926).

Undesirable white children may be withdrawn from school.—Under this section, certain undesirable children may be with-

drawn by trustees from a school, notwithstanding they are white, provided a proper school is provided for them. *Tucker v. Blease*, 97 S. C. 303, 81 S. E. 668 (1914).

Quoted in *Wrighten v. Board of Trustees*, 72 F. Supp. 948 (1947).

Cited in *State v. Cagle*, 111 S. C. 548, 96 S. E. 291 (1918).

§ 8. Clemson Agricultural College; South Carolina School for the Deaf and Blind; University of South Carolina; Winthrop Normal and Industrial College; Colored Normal, Industrial, Agricultural and Mechanical College.

The General Assembly may provide for the maintenance of Clemson Agricultural College, South Carolina School for the Deaf and Blind, located at Cedar Springs, the University of South Carolina, and the Winthrop Normal and Industrial College, a branch thereof, as now established by law, and may create scholarships therein; the proceeds realized from the land scrip given by the Act of Congress passed the second day of July, in the year eighteen hundred and sixty-two, for the support of an agricultural college, and any lands or funds which have heretofore been or may hereafter be given or appropriated for educational purposes by the Congress of the United States, shall be applied as directed in the Acts appropriating the same: *Provided*, That the General Assembly shall, as soon as practicable, wholly separate Claflin College from Claflin University, and provide for a separate corps of professors and instructors therein, representation to be given to men and women of the negro race; and it shall be the Colored Normal, Industrial, Agricultural and Mechanical College of this State.

1914 (28) 947; 1915 (29) 64.

See Const. 1868, Art. X, § 9.

§ 9. Property or credit of State shall not benefit sectarian institutions.

The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

Effect of section.—No public funds may be allocated in any manner to any hospital or health center which is “wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.” *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

Valid act authorizing funds for county health centers.—Act authorizing allocation of funds to the counties of the State for

construction of health centers and hospitals did not violate this provision of the S. C. Constitution forbidding use of appropriated funds for the aid of sectarian hospitals, where there was no instance of attempt or intention to so apply any part of the funds specified. *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723 (1949).

Cited in *Forrest v. City Council*, 65 S. C. 500, 43 S. E. 952 (1903).

§ 10. Gifts for educational purposes.

All gifts of every kind for educational purposes, if accepted by the General Assembly, shall be applied and used for the purposes designated by the giver, unless the same be in conflict with the provisions of this Constitution.

§ 11. Gifts to State; assets of unclaimed estates or co-partnerships; direct tax; State school fund.

All gifts to the State where the purpose is not designated, all escheated property, the net assets or funds of all estates or co-partnerships in the hands of the Courts of the State where there have been no claimants for the same within the last seventy years, and other money coming into the Treasury of the State by reason of the twelfth Section of an Act entitled "An Act to provide a mode of distribution of the moneys as direct tax from the citizens of this State by the United States in trust to the State of South Carolina," approved the twenty-fourth day of December, in the year eighteen hundred and ninety-one, together with such other means as the General Assembly may provide, shall be securely invested as the State School Fund, and the annual income thereof shall be apportioned by the General Assembly for the purpose of maintaining the public schools.

§ 12. Income from sale or license for sale of liquors.

All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the Counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth Section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however,* That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided.

Fund apportioned must be surplus.—Under this section, before any county can compel the comptroller to apportion such remainder, it must show that the fund in the treasury sought to be apportioned is a surplus remaining after meeting deficiencies. *State v. Derham*, 54 S. C. 349, 32 S. E. 418 (1899).

County may receive part of surplus after voting out dispensary.—An act providing that a county, voting out a dispensary,

should not receive any part of a surplus of the income from the dispensary school fund was held to be in violation of this section. *Murph v. Landrum*, 76 S. C. 21, 56 S. E. 850 (1907).

For additional related case, see *Murray v. Wilson Distilling Co.*, 213 U. S. 151, 29 S. Ct. 458, 53 L. Ed. 742 (1909).

Cited in *Powell v. Hargrove*, 136 S. C. 345, 134 S. E. 380 (1926); *Shelor v. Pace*, 151 S. C. 99, 148 S. E. 726 (1929).

ARTICLE XII.

CHARITABLE AND PENAL INSTITUTIONS.

§ 1. Institutions for care of insane and poor.

Institutions for the care of the insane and the poor shall always be fostered and supported by this State, and shall be subject to such regulations as the General Assembly may enact.

1914 (28) 960; 1915 (29) 104.

See Const. 1868, Art. XI, § 1.

Quoted in *Crouch v. Benet*, 198 S. C. 185,
17 S. E. (2d) 320 (1941).

§ 2. Board of Regents; powers.

The Governor shall, with the advice and consent of the Senate, appoint a Board of Regents, consisting of five members, whose terms of office shall be so designated that the term of one member shall expire each year, subject to the removal by the Governor for cause; which Board shall have charge of such institution or institutions as may be maintained by the State for the care of the insane. The Board of Regents shall have exclusive power to appoint and, in its discretion, remove one Superintendent thereof, and the Superintendent, who shall be a physician, shall have the power, in his discretion, to appoint and remove all other officers and employees of such institution, or institutions, subject to the approval of the Board of Regents.

1915 (29) 594; 1917 (30) 222.

§ 3. County poor.

The respective counties of this State shall make such provision as may be determined by law for all those inhabitants who by reason of age, infirmities and misfortune may have a claim upon the sympathy and aid of society.

Cross reference.—For parallel Code section, see § 71-157.

Counties may operate public hospitals.—The operation of public hospitals by counties is expressly authorized by this provision, and, therefore, does not come within the tax and bond inhibition of S. C. Const., Art. 10, § 6. *Doran v. Robertson*, 203 S. C. 434, 27 S. E. (2d) 714 (1943).

Such as hospital for tubercular patients.—An act providing for the establishment of separate county hospital for care of tubercular patients is within the power of the legislature under this section. *Law v. Spartanburg*, 148 S. C. 229, 146 S. E. 12 (1928).

§ 4. Directors of benevolent and penal State institutions.

The directors of the benevolent and penal State institutions which may be hereafter created shall be appointed or elected as the General Assembly may direct.

See Const. 1868, Art. XI, § 3.

§ 5. Directors of Penitentiary.

The Directors and Superintendent of the Penitentiary shall be appointed or elected as the General Assembly may direct.

See Const. 1868, Art. XI, § 2.

§ 6. Convicts sentenced to hard labor.

All convicts sentenced to hard labor by any of the Courts in this State may be employed upon the public works of the State or of the Counties and upon the public highways.

§ 7. Reformatory for juvenile offenders.

Provision may be made by the General Assembly for the establishment and maintenance by the State of a reformatory for juvenile offenders separate and apart from hardened criminals.

See Const. 1868, Art. X, § 8.

Convicted infants may be sentenced to State industrial school.—In view of this section, a statute providing that infants, tried and convicted, may be sentenced to State

industrial school until they reach the age of twenty-one is valid. *State v. Cagle*, 111 S. C. 548, 96 S. E. 291 (1918).

§ 8. Vacancies.

The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, except where otherwise provided for, with the power of removal until the next session of the General Assembly and until a successor or successors shall be appointed and confirmed.

See Const. 1868, Art. XI, § 4.

Removal power applies only to charitable and penal institutions.—This power of removal of the Governor is conferred only as to the officers of charitable and penal in-

stitutions. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912); *State v. Rhame*, 92 S. C. 455, 75 S. E. 881 (1912).

§ 9. Control of convicts.

The Penitentiary and the convicts thereto sentenced shall forever be under the supervision and control of officers employed by the State; and in case any convicts are hired or farmed out, as may be provided by law, their maintenance, support, medical attendance and discipline shall be under the direction of officers detailed for those duties by the authorities of the Penitentiary.

ARTICLE XIII.

MILITIA.

§ 1. Militia.

The militia of this State shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such persons as are now or may be exempted by the laws of the United States or this State, or who from religious scruples may be adverse to bearing arms, and shall be organized, officered, armed, equipped and disciplined as the General Assembly may by law direct.

See Const. 1868, Art. XIII, § 1.

§ 2. When exempt from arrest.

The volunteer and militia forces shall (except for treason, felony and breach of the peace) be exempt from arrest by warrant or other process while in active

service or attending muster or the election of officers, or while going to or returning from either of the same.

Cited in *State v. Quinn*, 111 S. C. 174, 97 S. E. 62 (1918).

§ 3. Governor may call out.

The Governor shall have the power to call out the volunteer and militia forces, either or both, to execute the laws, repel invasions, suppress insurrections and preserve the public peace.

See Const. 1868, Art. XIII, § 2.

Insurrection is combined resistance to authority of State.—Insurrection is any combined resistance to the lawful authority of the State, with intent to the denial thereof, when the same is manifested or intended to be manifested by acts of violence. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

Governor may not be enjoined from declaring state of insurrection.—The action of the Governor in declaring that a state of insurrection exists may not be enjoined by the Supreme Court or reviewed by it.

Hearon v. Calus, 178 S. C. 381, 183 S. E. 13 (1936).

But unauthorized acts of Governor are open to judicial inquiry.—The acts of the Governor lawfully done in the suppression of an insurrection are immune from interference by the Supreme Court. But when his acts exceed the authority given him by the State Constitution and statutes and are injurious to the personal liberty and property rights of the citizens of the State, they are open to the inquiry and control of the judicial arm of the State. *Hearon v. Calus*, 178 S. C. 381, 183 S. E. 13 (1936).

§ 4. Adjutant and Inspector General; staff officers.

There shall be an Adjutant and Inspector General elected by the qualified electors of the State at the same time and in the same manner as other State officers, who shall rank as Brigadier General, and whose duties and compensation shall be prescribed by law. The Governor shall, by and with the advice and consent of the Senate, appoint such other staff officers as the General Assembly may direct.

See Const. 1868, Art. XIII, § 3.

§ 5. Confederate pensions.

The General Assembly is hereby empowered and required, at its first session after the adoption of this Constitution, to provide such proper and liberal legislation as will guarantee and secure an annual pension to every indigent or disabled Confederate soldier and sailor of this State and of the late Confederate States who are citizens of this State, and also to the indigent widows of Confederate soldiers and sailors.

Legislature has direct authority to provide pensions.—This section does not affect the question of pensions in this State ex-

cept as furnishing direct authority to the State legislature to provide pensions. *State v. Derham*, 61 S. C. 258, 39 S. E. 379 (1901).

ARTICLE XIV.

EMINENT DOMAIN.

§ 1. Boundary rivers.

The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other

State bounded by the same; and they, together with all navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly.

See Const. 1868, Art. VI, § 1.

Special damages are required in action for obstructing river.—Under this section an action for damages by private persons cannot be maintained for obstructing navigable rivers unless special damage is thereby sustained. *South Carolina Steamboat Co. v. Wilmington, C. & A. R. Co.*, 46 S. C. 327, 24 S. E. 337 (1896).

In which action recovery may be had without proof of negligence.—One sustain-

ing special injuries from the obstruction of a navigable stream may recover therefor without proof of negligence. *Drews v. Burton & Co.*, 76 S. C. 362, 57 S. E. 176 (1907).

Cited in *McMeeken v. Central Carolina Power Co.*, 80 S. C. 512, 61 S. E. 1020 (1908); *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

§ 2. Title to certain lands.

The title to all lands and other property which have heretofore accrued to this State by grant, gift, purchase, forfeiture, escheats or otherwise shall vest in the State of South Carolina, the same as though no change had taken place.

See Const. 1868, Art. VI, § 2.

Legislature delegates right to condemn waterworks.—The right of a city to condemn waterworks is a delegated right from

the legislature, and is not a constitutional right. *Paris Mountain Water Co. v. Greenville*, 110 S. C. 36, 96 S. E. 545 (1918).

§ 3. Ultimate property in lands.

The people of the State are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from defect of heirs shall revert or escheat to the people.

See Const. 1868, Art. VI, § 3.

Power of eminent domain resides in State.—The primary right to acquire rests in eminent domain, and that power resides of right and by necessity in the State. The Constitution did not create it, but has only

affirmed it. *Jennings v. Sawyer*, 182 S. C. 427, 189 S. E. 746 (1937).

Legislature delegates right to condemn waterworks.—See note to S. C. Const., Art. 14, § 2.

ARTICLE XV.

IMPEACHMENT.

§ 1. Power of impeachment; impeachment of officer.

The House of Representatives shall have the sole power of impeachment. A vote of two thirds of all members elected shall be required for an impeachment. Any officer impeached shall thereby be suspended from office until judgment in the case shall have been pronounced; and the office shall be filled during the trial in such manner as may be provided by law.

See Const. 1868, Art VII, § 1.

Quoted in *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1903).

§ 2. Senate try impeachment; Chief Justice preside.

All impeachments shall be tried by the Senate, and when sitting for that purpose they shall be under oath or affirmation. No person shall be convicted except by a vote of two-thirds of all members elected. When the Governor is impeached, the Chief Justice of the Supreme Court, or, if he be disqualified, the Senior Justice, shall preside, with a casting vote in all preliminary questions.

See Const. 1868, Art. VII, § 2.

§ 3. Officers liable to impeachment.

The Governor and all other executive and judicial officers shall be liable to impeachment; but judgment in such case shall not extend further than removal from office. The persons convicted shall, nevertheless, be liable to indictment, trial and punishment according to law.

See Const. 1868, Art. VII, § 3.

Executive and judicial officers are removable by impeachment.—Under this section, every executive and judicial officer whose authority and jurisdiction extends over the entire State, and whose office is created by the Constitution or by statute and is filled by election by the people at large, is re-

movable by impeachment. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

But section does not apply to magistrates.—Magistrates are not such judicial officers as are removable by impeachment under this section. *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

§ 4. Removal of officers.

For any willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each House of the General Assembly: *Provided*, That the cause or causes for which said removal may be required shall be stated at length in such address, and entered on the Journals of each House: *And provided, further*, That the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defence, or by his counsel, or by both, before any vote for such address; and in all cases the vote shall be taken by yeas and nays, and be entered on the Journal of each House respectively.

See Const. 1868, Art VII, § 4.

Section is consistent with S. C. Const., Art. 3, § 27.—The provisions of this section are not inconsistent with the provisions of S. C. Const., Art. 3, § 27. *McDowell v. Burnett*, 90 S. C. 400, 73 S. E. 782 (1912).

Impeachment of probate judge is not condition to his indictment.—The State Constitution does not require the impeachment of a probate judge as condition precedent to indictment for failure to perform official duties. *State v. Green*, 52 S. C. 520, 30 S. E. 683 (1898).

General Assembly may remove sheriff.—This section makes no provision for the removal of a sheriff, such officer not being subject to impeachment or to removal upon the address of both houses of the General Assembly, and the General Assembly may provide for his removal. *State v. Ballentine*, 152 S. C. 365, 150 S. E. 46 (1929).

Cited in *McDowell v. Burnett*, 92 S. C. 469, 75 S. E. 873 (1912).

ARTICLE XVI.

AMENDMENT AND REVISION OF THE CONSTITUTION.

§ 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives. If the same be agreed to by two-thirds of the members elected to each House, such amendment or amendments shall be entered on the Journals respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the State, at the next general election thereafter for Representatives; and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of such amendment or amendments, and a majority of each branch of the next General Assembly shall, after such an election, and before another, ratify the same amendment or amendments, by yeas and nays, the same shall become part of the Constitution: *Provided*, That such amendment or amendments shall have been read three times, on three several days, in each House.

See Const. 1868, Art. XV, § 1.

- I. General Consideration.
- II. Application of Section.

I. GENERAL CONSIDERATION.

This section is mandatory.—The provisions of this section, regulating the amendment of the Constitution otherwise than by convention, are not merely directory but are mandatory. Strict observance of every substantial requirement as set forth is essential to the validity of proposed amendments. *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

It is intended to reveal scope of resolution.—The purpose of this section of the Constitution is that the members of the General Assembly may be fully apprised of the thing sought to be accomplished by the proposed resolution. *Weeks v. Ruff*, 164 S. C. 398, 162 S. E. 450 (1932).

And does not apply to Governor.—The Governor is not a part of the legislative machinery contemplated by this section. *Kalber v. Redfearn*, 215 S. C. 224, 54 S. E. (2d) 791 (1949).

Amendment is presumed to be properly passed.—In the absence of showing of failure to comply with this section, the Supreme Court will presume that the General Assembly and all other officials charged with duties in connection with submission, adoption, and ratification of amendment discharged such duties in manner required. *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

Legislature decides on ratification after election.—After an amendment has been submitted to the people and a majority of

the qualified electors have voted in favor of its adoption, the only action which the General Assembly has the power to take in regard to it is to determine whether it should be ratified in the manner provided by the Constitution. *Bray v. City Council*, 62 S. C. 57, 39 S. E. 810 (1901).

Quoted in *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899.)

Cited in *Mew v. Charleston & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828 (1899); *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821 (1907); *Paris Mountain Water Co. v. Greenville*, 110 S. E. 36, 96 S. E. 545 (1918).

II. APPLICATION OF SECTION.

Amendment may be valid although title is incomplete.—The requirements of this section are fully carried out when entire body of joint resolution proposing constitutional amendment is entered in full on journal of House at the time of second and third readings, though statement of title is incomplete in that it failed to refer to one section of the Constitution proposed to be amended. *Fleming v. Royall*, 145 S. C. 438, 143 S. E. 162 (1928).

Vote is not required on each reading.—There is no requirement in this section that the yea and nay vote shall be taken on each reading of the proposed amendment, the wording thereof being merely that it shall be agreed to by two thirds of the members elected to each house and entered in the journals respectively. A yea and nay vote, taken on the second reading, meets the requirements of this section. *Thompson v.*

Livingston, 116 S. C. 412, 107 S. E. 581 (1921).

Or for committee report on proposed amendment.—Under this section a conference committee report on proposed amendment to joint resolution need not be adopted by yea and nay vote. *Stevenson v. Carrison*, 122 S. C. 212, 115 S. E. 251 (1922).

House journals are inadmissible to impeach certified amendment.—Where a joint resolution has been entered once on both the House and Senate Journal with yea and nay vote, such entry fulfilled requirement of the Constitution, and a certificate of the Secretary of State certifying that it had been read three times is evidence of the passage of the act. The introduction of House Journals to show the joint resolution had not received three readings is inadmissible. *Lucas v. Barringer*, 120 S. C. 68, 112 S. E. 746 (1922); *Stevenson v. Carrison*, 122 S. C. 212, 115 S. E. 251 (1922).

General effect of material amendment of resolution.—If a resolution passed by one branch of the Assembly be so amended by the other as to broaden or enlarge the authority conferred by the resolution in its original form, the change is so material, substantial, and radical as to require the adoption of such amendment by the originating body by a yea and nay vote. But when an amendment by either branch of the Assembly to a resolution passed by the other merely limits and restricts the scope of the authority conferred, the change made by such an amendment is not substantial or material in the sense that, when the same is returned to the body in which it originated, it must be agreed to by a yea and nay vote, recorded upon the journal. *Weeks v. Ruff*, 164 S. C. 398, 162 S. E. 450 (1932);

Palmer v. Dunn, 216 S. C. 558, 59 S. E. (2d) 158 (1950).

Where there was a proposal by the Senate to amend the Constitution by altering the debt limits of three subdivisions of Sumter County, and the other body of the General Assembly amended such proposal by striking out two of the subdivisions and returned it in that form to the Senate which concurred in the amendment, and in such form the proposal to amend was ratified by the General Assembly and adopted by the people in the ensuing general election, there was no necessity to enter the modified form of the proposed amendment in extenso upon the journal of the Senate and again take the yeas and nays. *Palmer v. Dunn*, 216 S. C. 558, 59 S. E. (2d) 158 (1950).

General effect of failure to read amendment three times.—Where resolution of the House for a constitutional amendment is amended by the Senate, and where the proposed amendments to the resolution are of such nature as to create so radical a difference from the original resolution as to make of it a new act, the failure to read the amendments three times and to spread them on the minutes is a fatal defect. But if the proposed amendments preserve the identity of the submitting resolution and the change is one of language or of phraseology, and not of substance, the failure so to read and so to enter is not fatal. *Weeks v. Ruff*, 164 S. C. 398, 162 S. E. 450 (1932).

For case holding that House's resolution to amend Constitution was not so altered by Senate's amendment to the resolution as to require reading again before the House, see *Weeks v. Ruff*, 164 S. C. 398, 162 S. E. 450 (1932).

§ 2. Two or more amendments.

If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

See Const. 1868, Art. XV, § 2.

Section is mandatory.—The provisions of this section are mandatory and not merely directory. *Duncan v. Record Pub. Co.*, 145 S. C. 196, 143 S. E. 31 (1927).

And compliance therewith is presumed.—In the absence of showing of failure to comply with this section, the Supreme Court will presume that the General Assembly and officials discharged duties in amending S. C. Constitution in required manner. *Duncan*

v. Record Pub. Co., 145 S. C. 196, 143 S. E. 31 (1927).

Amendment may include by reference amendment to another section.—A single amendment to the State Constitution, including by reference an amendment to another section, does not violate the provisions of this section where there is reference to only one subject. *Bethea v. Dillon*, 91 S. C. 413, 74 S. E. 983 (1912).

§ 3. Constitutional convention.

Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend or change this Constitution, they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly.

See Const. 1868, Art. XV, § 3.

Cited in *Paris Mountain Water Co. v. Brice v. McDow*, 116 S. C. 324, 108 S. E. 84 (Greenville, 110 S. C. 36, 96 S. E. 545 (1918); (1921).

ARTICLE XVII.

MISCELLANEOUS MATTERS.

§ 1. Qualification of officers.

No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector: *Provided*, The provisions of this Section shall not apply to the offices of State Librarian and Departmental Clerks, to either of which offices any woman, a resident of the State two years, who has attained the age of twenty-one years, shall be eligible.

See Const. 1868, Art. XIV, § 1.

Cross reference.—As to qualifications of elector, see notes to S. C. Const., Art. 2, §§ 3 and 4.

Requirement of section is implied in act creating office.—This requirement need not be expressly provided in an act of the legislature which creates an office. It may be said to be necessarily implied. Certainly the Constitution cannot be circumvented by the omission. *McLure v. McElroy*, 211 S. C. 106, 44 S. E. (2d) 101 (1947).

Registration certificate must be issued in county where office sought.—In *Blalock v. Johnston*, 180 S. C. 40, 185 S. E. 51 (1936), the court held that the petitioner, having

no registration certificate issued to him in Cherokee County, was not eligible to hold the office of tax collector in that county.

Minor may be appointed to serve summons.—A minor may be appointed specially to serve a summons in a magistrate's court, although this section provides that no person shall be appointed to any office unless he is a qualified elector. *Bell v. Pruit*, 51 S. C. 344, 29 S. E. 5 (1898).

Cited in *Phillips v. South Carolina Tax Comm.*, 195 S. C. 472, 12 S. E. (2d) 13 (1940); *Brown v. Brown*, 215 S. C. 502, 56 S. E. (2d) 330 (1949).

§ 2. Claims against State.

The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.

See Const. 1868, Art. XIV, § 4.

Cross references.—As to special acts of legislature violating Fourteenth Amendment of the United States Constitution, see note thereto. As to claims against State, see §§ 30-251 to 30-255 of the Code.

Section refers only to valid subsisting claims.—This section plainly refers to the establishment and adjustment of valid subsisting claims against the State and not to

the creation by legislative action of a new liability for an act for which the State was not liable at the time of its commission. *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923).

Which may be based on wrongful acts of State officers.—This section manifests an intention to empower the legislature to provide for adjustment and payment for wrong-

ful acts of the State's officers, agents and servants. *Ouzts v. State Highway Dept.*, 161 S. C. 21, 159 S. E. 457 (1931).

Unless granting claim confers unfair advantage upon plaintiff.—In the case of *Sirrine v. State*, 132 S. C. 241, 128 S. E. 172 (1925), the court held that an act which conferred upon the plaintiff a right denied all others, that is, a right to recover for the tortious acts of the agents and servants of the State, did not come under the provisions of this section and was therefore a violation of S. C. Const., Art. 3, § 34, sub-div. 9. *Ouzts v. State Highway Dept.*, 161 S. C. 21, 159 S. E. 457 (1931).

Commission to determine claims is not court.—A commission appointed by the legislature, under the authority of this section, to determine claims against the former State dispensary is not a court, though its duties necessarily involve the exercise of judicial functions. It is limited to the exercise of such powers as are expressly or impliedly conferred upon it by the legislature. *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 C. Ct. 293, 60 L. Ed. 658 (1916).

Although it may ascertain amounts due both claimant and State.—Under statute creating dispensary commission, such commission has power to ascertain amount due claimant by State. In arriving at that amount, it could also ascertain if claimant owes anything to the State and state any difference involved as a result of its finding, although such finding would not have force and effect of judgment by court. *Carolina Glass Co. v. State*, 87 S. C. 270, 69 S. E. 391 (1910), affirmed in 240 U. S. 305, 36 S. Ct. 293, 60 L. Ed. 658 (1916).

§ 3. Divorces.

Divorces from the bonds of matrimony shall be allowed on grounds of adultery, desertion, physical cruelty, or habitual drunkenness.

1947 (45) 725; 1949 (46) 137.

See Const. 1868, Art. XIV, § 5.

Cross reference.—As to credit required of one state to be accorded decision of another state, see note to U. S. Const., Art. 4, § 1.

Cases decided prior to 1949 amendment.—For cases decided under this section prior to the 1949 amendment thereto, see *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896); *State v. Duncan*, 110 S. C. 253, 96 S. E. 294 (1918); *Shirley v. Parris*, 121 S. C. 260, 113 S. E. 788 (1922); *Scheper v. Scheper*, 125 S. C. 89, 118 S. E. 178 (1923); *Johnson v. Johnson*, 194 S. C. 115, 8 S. E. (2d) 351 (1940); *Weston v. Weston*, 210 S. C. 1, 41 S. E. (2d) 372 (1947).

Effect of State's waiver of immunity as sovereign.—A waiver of the State's immunity as a sovereign is also a waiver of its immunity as an eleemosynary corporation. *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923).

Decision on first appeal concludes waiver issue as to State sovereignty.—Where, in an action against the State for wrongful death, the Supreme Court on the first appeal held that the complaint stated a good cause of action, a waiver of the State's immunity as a sovereign has been adjudicated, and that question is not open for further consideration. *Sandel v. State*, 126 S. C. 1, 119 S. E. 776 (1923).

Action is allowed for sum borrowed to form new county.—Under this section, where an act provides that all actual expenses included in the formation of a county created by that act shall be an obligation of the county and creates a special commission authorizing it to borrow money in the name of the county to pay the same, and to pledge taxes to secure the sum borrowed, action may be maintained in the court of common pleas to recover from the county a sum borrowed by the special commission which audited and approved a claim, regardless of whether it was audited by the county board of the county after creation. *Bank of McCormick v. McCormick County*, 114 S. C. 469, 103 S. E. 787 (1920).

Cited in *Campbell v. Sanders*, 42 S. C. 522, 20 S. E. 415 (1894); *Lee v. Robinson*, 196 U. S. 64, 25 S. Ct. 180, 49 L. Ed. 388 (1904).

Courts may litigate rights unless prohibited by law.—In this state there is no limitation on the power of the courts to settle and decree the rights of litigants, save as prohibited by the fundamental law. *Mathe-son v. McCormac*, 186 S. C. 93, 195 S. E. 122 (1938).

Foreign divorces are recognized under Federal Constitution.—A foreign judgment in a divorce action rendered by a competent court, having jurisdiction of the parties and the subject-matter, is entitled under the full faith and credit clause to such force and effect in South Carolina courts as may prop-

erly be accorded the judgment of another state under the rules governing the extra-territorial effect of such judgments. *Scheper v. Scheper*, 125 S. C. 89, 118 S. E. 178 (1923).

And foreign adjudication of property rights are recognized.—Under the law of comity, a judicial determination of a competent court of a sister state, whereby the

marital status of a husband was denatured of its efficacy to give rise to a legal right in the wife's separate property, will be given the same force and effect in this jurisdiction as in the state of its rendition. *Scheper v. Scheper*, 125 S. C. 89, 118 S. E. 178 (1923).

Quoted in *Brown v. Brown*, 215 S. C. 502, 56 S. E. (2d) 330 (1949).

§ 4. Supreme Being.

No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

See Const. 1868, Art. XIV, § 6.

§ 5. Public printing.

The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly, with the printing required for the Executive and other departments of the State, shall be done as provided by law.

1922 (32) 1280; 1923 (33) 5.

See Const. 1868, Art. XIV, § 7.

Cross reference.—As to public printing, see §§ 1-501 to 1-568 of the Code.

Contract for engraving certificates may be let without competitive bids.—The Governor and State Treasurer have authority to

contract for engraving highway certificates of indebtedness without advertisement and competitive bids. *Hall v. Richards*, 159 S. C. 34, 156 S. E. 12 (1930).

§ 6. Removal of causes.

The General Assembly shall provide for the removal of all causes which may be pending when this Constitution goes into effect to Courts created by the same.

See Const. 1868, Art. XIV, § 9.

§ 7. Lotteries.

No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State; and the General Assembly shall provide by law at its next session for the enforcement of this provision.

See Const. 1868, Art. XIV, § 2.

Theater "give away plan" held valid.—See *Darlington Theatres v. Coker*, 190 S. C. 282, 2 S. E. (2d) 782 (1939), for a theater

"give away plan" which successfully avoids the prohibitions of this section and § 16-501.

§ 8. Officers gambling and betting.

It shall be unlawful for any person holding an office of honor, trust or profit to engage in gambling or betting on games of chance; and any such officer, upon conviction thereof, shall become thereby disqualified from the further exercise of the functions of his office, and the office of said person shall become vacant, as in the case of resignation or death.

§ 9. Property of married women.

The real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire, either by gift, grant, inheritance, devise or otherwise, shall be her separate property, and she shall have all the rights incident to the same to which an unmarried woman or a man is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried.

See Const. 1868, Art. XIV, § 8.

- I. General Consideration.
- II. Application of Section.

Cross Reference.

As to property rights of married women, see §§ 20-201 to 20-208.

I. GENERAL CONSIDERATION.

Historical note.—Under the standing of this section in the S. C. Constitution of 1868, a married woman was only allowed to bequest, devise or alienate her separate estate, and the last sentence of this section, as to her power to contract, was not included. For cases construing the section as it then stood, see *Gwynn v. Gwynn*, 27 S. C. 525, 4 S. E. 229 (1887); *Sibley v. Parks*, 28 S. C. 607, 5 S. E. 809 (1888); *Hagan v. Hoover*, 33 S. C. 219, 11 S. E. 725 (1890); *Kincaid v. Anderson*, 33 S. C. 260, 11 S. E. 766 (1890); *Aultman & Taylor Co. v. Rush*, 26 S. C. 517, 2 S. E. 402 (1887); *Livingston v. Shingler*, 30 S. C. 159, 8 S. E. 842 (1889); *Brown v. Pechman*, 49 S. C. 546, 27 S. E. 520 (1897); *Aultman & Taylor Co. v. Gilbert*, 28 S. C. 303, 5 S. E. 806 (1888); *Brown v. Pechman*, 53 S. C. 1, 30 S. E. 586 (1898).

Section makes "separate interest" of property owned at marriage.—The interest of a married woman in lands of which she was seized at the time of marriage, prior to the Constitution, is made a "separate interest" by this section. *Kincaid v. Anderson*, 33 S. C. 260, 11 S. E. 766 (1890).

And grants married woman unlimited power to contract.—Under this section, a married woman is free from all common-law disabilities of coverture as to property rights and has unlimited power to contract. *Burwell v. South Carolina Tax Comm.*, 130 S. C. 199, 126 S. E. 29 (1924).

With anyone including husband.—The effect of the provisions of this section is to confer upon a married woman power to contract, either expressly or impliedly, with any person including her husband. *Stephens v. Stephens*, 213 S. C. 525, 50 S. E. (2d) 577 (1948).

Cited in *Ganey v. Anderson*, 87 S. C. 47, 68 S. E. 888 (1910), in support of the holding that while a sale under a judgment in foreclosure vests the purchaser with the estate passed by the mortgage, including the wife's dower when she joined in the mortgage, discharged of the right to redeem, yet where the mortgagor without his wife conveys the land to the mortgagee to extinguish the mortgage, the wife's right of dower is not barred.

II. APPLICATION OF SECTION.

Married woman may engage in trade.—A married woman can engage by herself in trade, and can employ her husband as agent to carry on the business. *Kuster v. Dickson*, 45 F. 91 (1891).

And may make partnership contract with husband.—Under the last provision of this section and legislative history of statutes relating to the power of married women as to their separate property and the right to contract with reference thereto, a married woman can enter into a contract of partnership with her husband. *Burwell v. South Carolina Tax Comm.*, 130 S. C. 199, 126 S. E. 29 (1924).

But evidence of such partnership must be clearly proved.—A married woman may by this provision enter into a partnership agreement with her husband. In determining the existence of a partnership between husband and wife, the general rule governing the formation of partnership should apply, and in such case the evidence of the partnership should be clearly proved. *Stephens v. Stephens*, 213 S. C. 525, 50 S. E. (2d) 577 (1948).

She may contract for release of dower.—Wife's release and contract to release husband's lands from right of dower for consideration was held to estop her from claiming dower in lands, since Constitution gives married woman freedom to contract. *Watson v. Watson*, 172 S. C. 362, 174 S. E. 33 (1934).

And may sue for unauthorized levy on her property.—Under this section, an unauthorized levy upon a married woman's property

to satisfy a debt of her husband, by which she is damaged, constitutes a good cause of action. *Holtzclaw v. Gassaway*, 52 S. C. 551, 30 S. E. 399 (1898).

Although such property apparently belongs to husband.—Where, to all appearances, a wife's separate property appears to belong to her husband, it is not sufficient to warrant a holding that the husband owned and was possessed of it, where the husband's creditor had knowledge of the true state of affairs. *DeLoach v. Sarratt*, 55 S. C. 254, 33 S. E. 2, 35 S. E. 441 (1899).

But she may not sell property against trust provisions.—An express provision in a deed creating a trust estate in a married woman with remainder over to her children, which provision authorizes the trustee to make changes of investment with the consent in writing of the cestui que trust and to hold the substituted property subject to the same trust as provided in the original deed, is a limitation on the power both of the trustee and the cestui que trust which prevents a sale except for reinvestment, notwithstanding the fact that this section provides that a married woman may alienate her property as though unmarried, since such provision would enlarge the powers of the trustee beyond the terms of the deed of trust. *Rabb v. Flenniken*, 29 S. C. 278, 7 S. E. 597 (1888).

Her deed need not declare intent to convey separate estate.—A deed by a married woman of her separate estate in the usual form is valid, though it contains no formal declaration of her intent to convey her sep-

arate estate. *Carroll v. Thomas*, 54 S. C. 520, 32 S. E. 497 (1899).

Which separate estate is liable for her private debts.—Where, in an action against a married woman for goods sold and delivered, it appears that the defendant owns a large plantation in her own right and that by reason of her representations as to her property and on her request, plaintiff was induced to give her credit for goods, the defendant and her estate are bound for all supplies furnished for her plantation. *Brown v. Thomson*, 27 S. C. 500, 4 S. E. 345 (1887).

Including her medical fees.—A married woman's separate estate is liable for the fees of a physician whom she calls in for treatment. *Glenn v. Gerald*, 64 S. C. 236, 42 S. E. 155 (1902).

And her funeral expenses.—By virtue of this section, and §§ 19-476 and 20-202 of the Code, a husband is entitled to recover from his wife's estate money paid by him for her funeral expenses. *In re Johnson's Estate*, 198 S. C. 526, 18 S. E. (2d) 450 (1942).

Grant to husband and wife may be tenancy in common.—Under this section of the Constitution and §§ 20-202, 20-203, and 20-206 of the Code, providing that the real and personal property of a married woman shall be her separate property, permitting her to convey and devise the same, and giving her a right to contract, where a grant is made to a husband and wife in the absence of any express intention of conveying the whole to the survivor, they become tenants in common. *Green v. Cannady*, 77 S. C. 193, 57 S. E. 832 (1907).

§ 10. Laws now of force.

All laws now in force in this State and not repugnant to this Constitution shall remain and be enforced until altered or repealed by the General Assembly, or shall expire by their own limitations.

Validation of existing laws.—*Cohen v. Hoff*, 3 Brev. (5 S. C. L.) 500.

General act is needed to amend act passed before Constitution.—Under this and the following section, an act passed before this Constitution, relating to salary of the commissioner of education in Berkley County, cannot be amended, repealed, or altered except by a general act. *DeHay v. Com'rs*, 66 S. C. 229, 44 S. E. 790 (1903).

City council may prosecute violation of city ordinance.—Under this section and S. C. Const., Art. 5, § 31, providing that all writs and processes shall run and all prosecutions shall be conducted in the name of the State, a prosecution for violation of a city ordinance by the city council is not

prohibited. *City Council v. Leopard*, 61 S. C. 99, 39 S. E. 248 (1901).

Attachment lies against nonresident.—Under this section, S. C. Const., Art. 17, § 11 and S. C. Const., Art. 5, § 23, providing "Every civil action cognizable by magistrates shall be brought before a magistrate in the county where the defendant resides," an action by attachment against a nonresident and a judgment in rem is not prevented. *Burckhalter v. Jones*, 58 S. C. 89, 36 S. E. 495 (1900).

Competing railway may not purchase lines within State.—Under this section and S. C. Const., Art. 17, § 11, § 58-933 of the Code, providing that no corporation shall purchase or lease any railroad in the State

where it is interested in any competing line within or without the State, was not repealed by S. C. Const., Art. 9, § 8, relating to the consolidation of railroad lines in the State. *Edwards v. Southern Ry. Co.*, 66 S. C. 277, 44 S. E. 748 (1903).

Cited in *In re Hooper*, 48 S. C. 149, 26 S. E. 466 (1897); *Carlisle v. Prior*, 48 S. C. 183, 26 S. E. 244 (1897).

§ 11. Schedule.

That no inconvenience may arise from the change in the Constitution of this State, and in order to carry this Constitution into complete operation, it is hereby declared:

Laws now of force; ordinances.—First. That all laws in force in this State, at the time of the adoption of this Constitution, not inconsistent therewith, and constitutional when enacted shall remain in full force until altered or repealed by the General Assembly or expire by their own limitation. All ordinances passed and ratified at this Convention shall have the same force and effect as if included in and constituting a part of this Constitution.

Writs, actions, etc.—Second. All writs, actions, causes of action, proceedings, prosecutions and rights of individuals, of bodies corporate and of the State, when not inconsistent with this Constitution, shall continue as valid.

Laws inconsistent with Constitution.—Third. The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in force until such legislation is had.

Fines, etc., accruing.—Fourth. All fines, penalties, forfeitures and escheats accruing to the State of South Carolina under the Constitution and laws heretofore in force shall accrue to the use of the State of South Carolina under this Constitution, except as herein otherwise provided.

Recognizances, etc.; indictments.—Fifth. All recognizances, obligations and all other instruments entered into or executed before the adoption of this Constitution to the State, or to any County, township, city or town therein, and all fines, taxes, penalties and forfeitures due or owing to this State, or to any County, township, city or town therein, and all writs, prosecutions, actions and proceedings, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments which shall have been found, or may hereafter be found, for any crime or offence committed before the adoption of this Constitution may be prosecuted as if no change had been made, except as otherwise provided herein.

All officers hold over; compensation.—Sixth. All officers, State, executive, legislative, judicial, circuit, district, County, township and municipal, who may be in office at the adoption of this Constitution, or who may be elected before the election of their successors as herein provided, shall hold their respective offices until their terms have expired and until their successors are elected or appointed and qualified as provided in this Constitution, unless

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sooner removed as may be provided by law; and shall receive the compensation now fixed by the Statute Laws in force at the adoption of this Constitution.

Elections.—Seventh. At all elections held for members of the General Assembly in case of a vacancy, or for any other office, State, County or municipal, the qualifications of electors shall remain as they were under the Constitution of Eighteen hundred and sixty-eight until the first day of November, in the year Eighteen hundred and ninety-six.

Takes effect.—Eighth. This Constitution, adopted by the people of South Carolina in Convention assembled, shall be in force and effect from and after the Thirty-first day of December, in the year Eighteen hundred and Ninety-five.

Constitution of 1868 repealed.—Ninth. The provisions of the Constitution of Eighteen hundred and Sixty-eight and amendments thereto are repealed by this Constitution, except when re-ordained and declared herein.

- I. General Consideration.
- II. Application of Section.

I. GENERAL CONSIDERATION.

Intent of section.—The intention of this section is first that any inconvenience that might arise by reason of the changes in the new Constitution should be prevented as far as possible; second, that the provisions of the present Constitution should not affect the laws, proceedings, rights, etc., which were not inconsistent with it at the time of its adoption; third, that laws which were inconsistent with it, but required legislation to enforce them, should not be affected by the present Constitution until such legislation was had; and fourth, that all laws inconsistent with the present Constitution, except those that required legislation to enforce them, should cease upon the adoption of the said Constitution. *Bank of Orangeburg v. Kohn*, 52 S. C. 120, 29 S. E. 625 (1898).

All laws remained in force upon adoption of Constitution.—All laws in force at the time of the adoption of the present Constitution remained in force, unless they were unconstitutional when enacted or were inconsistent with the provisions of the Constitution. *Florida Central & P. R. Co. v. Columbia*, 54 S. C. 266, 32 S. E. 408 (1899).

S. C. Constitution of 1895 is not retroactive.—Despite this section and S. C. Const., Art. 3, § 28, providing that no waiver shall defeat the right of homestead before assignment, except it be by deed or mortgage, and only as against the mortgage debt, and that no creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the

homestead and other property shall first exhaust the homestead, the S. C. Const. of 1895 is not retroactive. *Bank of Orangeburg v. Kohn*, 52 S. C. 120, 29 S. E. 625 (1898).

And third subdivision of section does not refer to retroactive application.—The words in the third subdivision of this section, "The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption," are in effect the usual repealing words of a statute and have no reference to the question whether it was intended to be prospective or retroactive in its operation. *Bank of Orangeburg v. Kohn*, 52 S. C. 120, 29 S. E. 625 (1898).

Repugnant statute must be unconstitutional at enactment.—Where it is not suggested that the statutes in question were unconstitutional when enacted, it is impossible under this section for an act of the Legislature having the force of law to be declared repugnant to a constitutional provision subsequently adopted and having prospective operation only. *McCullough v. Graham*, 70 S. C. 63, 49 S. E. 1 (1904).

For additional related case, as to validity under the new S. C. Constitution of acts creating a school district and authorizing a tax levy for school purposes, see Martin v. School District, 57 S. C. 125, 35 S. E. 517 (1900).

Cited in State v. Tucker, 54 S. C. 251, 32 S. E. 361 (1899); *State v. Tucker*, 56 S. C. 516, 35 S. E. 215 (1900).

II. APPLICATION OF SECTION.

New State Constitution governs former jeopardy.—Under subdiv. 5 of this section

as regards former jeopardy, the rights of a defendant charged with having committed a crime before the new State Constitution went into effect but placed on trial thereafter were held to be governed by the provisions of the new Constitution. *State v. Richardson*, 47 S. C. 166, 25 S. E. 220 (1896).

But does not affect causes pending in Supreme Court before ratification.—The provisions of the S. C. Const. of 1895 relating to the jurisdiction of the Supreme Court do not affect the decision of a cause submitted prior to December 31, 1895, at which time the Constitution was by this subdivision to go into effect, though the opinion in such case was not filed till January 3, 1896. *Land Mortg. Invest., etc., Co. v. Faulkner*, 45 S. C. 503, 23 S. E. 516, 24 S. E. 288 (1896).

And does not discontinue Supreme Court pending election of justice.—Under subdiv. 3 of this section and S. C. Const., Art. 5, §§ 2 and 3, providing (prior to the 1911 amendment [1911 (27) 89]) that the Supreme Court shall consist of four members instead of three, as theretofore, a new tribunal was not created and the Supreme Court continued as before until the General Assembly elected the additional associate justice. *Middleton v. Taber*, 46 S. C. 337, 24 S. E. 282 (1896).

Magistrates may temporarily discharge trial justice duties.—Subdivision 3 and subdiv. 6 were intended to authorize magistrates to discharge the duties under the former Constitution discharged by trial justices until the legislature should define the duties of magistrates, which office was created by the new Constitution. *Carlisle v. Prior*, 48 S. C. 183, 26 S. E. 244 (1897); *In re Hooper*, 48 S. C. 149, 26 S. E. 466 (1897).

Holding over until appointment of suc-

cessors is not authorized.—Subdivision 6 of this section does not fix a policy by which officers shall hold over until the appointment of their successors, but was only made to bridge a passage of officers from service under the State Constitution of 1868 to the S. C. Constitution of 1895. *Gibbes v. Richardson*, 107 S. C. 191, 92 S. E. 333 (1917).

Attachment lies against nonresident.—See note to S. C. Const., Art. 17, § 10.

Special jury in condemnation proceedings is valid.—Subdivision 1 of this section and S. C. Const., Art. 9, § 20, providing that in condemnation of land for right of way the compensation to be paid the owner shall be ascertained by a jury of twelve men in a court of record as shall be prescribed by law, do not supersede §§ 58-774, 58-776, 58-777, 58-779, 57-780 and 58-782, providing for the fixing of compensation in condemnation proceedings by a special jury, since the word "shall" in S. C. Const., Art. 9, § 20 ("as shall be prescribed by law") cannot be presumed to mean that there must be legislation after the adoption of the Constitution prescribing the method of securing a trial by a jury of twelve men in a court of record. *Atlantic Coast Line R. Co. v. South-Bound R. Co.*, 57 S. C. 317, 35 S. E. 553 (1900).

Right of way may not be made through another's land without consent.—A statute authorizing the location of a private way to the highway from the land of one, surrounded on all sides by private land and without any such right of way, violates S. C. Const., Art. 1, § 17, providing that private property shall not be taken for private use without the consent of the owner, and is made void by subdiv. 3 of this section of the Constitution. *Beaudrot v. Murphy*, 53 S. C. 118, 30 S. E. 825 (1898).

Done in Convention in Columbia on the Fourth day of December, in the year of our Lord, one thousand Eight hundred and Ninety-five.

JNO GARY EVANS

President of the Convention.

IRA B. JONES

Vice-President of the Convention.

W. JASPER TALBERT

Vice-President of the Convention.

Attest:

S. W. VANCE,

Secretary of the Convention.

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

DELEGATES FROM ABBEVILLE.

FRANK B. GARY
ROBERT R. HEMPHILL
J. C. KLUGH
I. H. McCALLA
R. F. McCASLAN
W. C. McGOWAN

DELEGATES FROM AIKEN.

D. S. HENDERSON
ROBT. L. GUNTER
F. T. WOODWARD

DELEGATES FROM ANDERSON.

J. E. BREAZEALE—
GEO. E. PRINCE
JAMES M. SULLIVAN
D. H. RUSSELL
J. PERRY GLENN
L. D. HARRIS

DELEGATES FROM BARNWELL.

W. C. SMITH
C. M. HIERS
A. HOWARD PATTERSON
ROBERT ALDRICH
G. DUNCAN BELLINGER
GEO. H. BATES

DELEGATES FROM BEAUFORT.

DELEGATES FROM BERKELEY.

E. J. DENNIS
J. B. MORRISON
H. H. MURRAY
JAS. B. WIGGINS
R. C. McMAKIN
A. H. DeHAY

DELEGATES FROM CHARLESTON.

JULIAN MITCHELL
J. N. NATHANS
W. St. JULIEN JERVEY—
GEO. F. VON KOLNITZ JR.
J. P. K. BRYAN
JOS. L. OLIVER
WILLIAM MOSELEY FITCH
THEODORE G. BARKER

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

DELEGATES FROM CHESTER.

J. L. GLENN
T. J. CUNNINGHAM
R. O. ATKINSON
GEORGE WILLIAMS GAGE

DELEGATES FROM CHESTERFIELD.

E. J. KENNEDY
E. N. REDFEARN
F. P. TAYLOR

DELEGATES FROM CLARENDON.

DANIEL J. BRADHAM
JOSEPH S. CANTEY
JOHN W. KENNEDY
J. M. SPROTT—[died during session]

DELEGATES FROM COLLETON.

D. H. BEHRE
L. E. PARLER
C. W. GARRIS
M. R. COOPER
M. P. HOWELL

DELEGATES FROM DARLINGTON.

J. O. A. MOORE
HENRY CASTLES BURN
J. N. PARROTT
A. J. H. PERWITT

DELEGATES FROM EDGEFIELD.

W. H. TIMMERMAN
G. D. TILLMAN
J. C. SHEPPARD
R. B. WATSON
B. R. TILLMAN

DELEGATES FROM FAIRFIELD.

G. W. RAGSDALE
W. L. ROSBOROUGH
THOS. W. BRICE
RICHARD ASHE MEARES

DELEGATES FROM FLORENCE.

R. M. McCOWN
W. F. CLAYTON
BROWN B. McWHITE
J. O. BYRD [died during session]

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

DELEGATES FROM GEORGETOWN.

I. HARELSTON READ
E. F. MATHEWS

DELEGATES FROM GREENVILLE.

J. WALTER GRAY
G. G. WELLS
J. THOMAS AUSTIN
HUGH M. BARTON
HUGH B. BUIST
HENRY J. HAYNESWORTH

DELEGATES FROM HAMPTON.

WILLIAM J. GOODING
CHARLES J. C. HUTSON
AMOS J. HARRISON

DELEGATES FROM HORRY.

JOHN P. DERHAM
J. A. McDERMOTTE
JEREMIAH SMITH

DELEGATES FROM KERSHAW.

J. W. FLOYD
C. L. WINKLER
J. T. HAY

DELEGATES FROM LANCASTER.

J. N. ESTRIDGE
JNO. W. HAMEL

DELEGATES FROM LAURENS.

ALEXIUS J. SMITH
R. L. HENRY
J. H. WHARTON

DELEGATES FROM LEXINGTON.

C. M. EFIRD
J. L. SHULER
E. L. LYBRAND

DELEGATES FROM MARION.

W. J. MONTGOMERY
J. EDWIN ELLERBE
E. B. BERRY
JAMES D. MONTGOMERY

DELEGATES FROM MARLBORO.

THOMAS EDWARD DUDLEY
WM. DeWITT EVANS
THOS. IRBY ROGERS
ROBERT HAYNE HODGES (Died During Session)

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

DELEGATES FROM NEWBERRY.

GEORGE JOHNSTONE
J. A. SLIGH
GEO. S. MOWER
JOS. L. KEITT

DELEGATES FROM OCONEE.

J. C. ALEXANDER
O. M. DOYLE
W. J. STRIBLING

DELEGATES FROM ORANGEBURG.

I. W. BOWMAN
L. S. CONNOR
E. H. HAUSER
OSCAR R. LOWMAN
A. K. SMOKE

DELEGATES FROM PICKENS.

W. THOS. FIELD
W. THOS. BOWEN
R. FRANK SMITH

DELEGATES FROM RICHLAND.

JOHN T. SLOAN
JOHN JOSEPH McMAHAN
JOHN B. DENT
WILIE JONES
H. C. PATTON

DELEGATES FROM SPARTANBURG.

C. A. BARRY
M. O. ROWLAND
W. T. BOBO
W. E. CARVER
A. S. WATERS
T. EARLE JOHNSON
STANYARNE WILSON

DELEGATES FROM SUMTER.

T. B. FRASER
RICHD. D. LEE
GEO. P. McKAGEN, SR.
SHEPARD NASH
JAS. H. SCARBOROUGH
R. P. STACKHOUSE

DELEGATES FROM UNION.

JAMEST. DOUGLASS
W. A. NICHOLSON
C. H. PEAKE
J. C. OTTS

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

DELEGATES FROM WILLIAMSBURG.

S. W. GAMBLE
THOS. M. GILLAND
GEORGE J. GRAHAM
W. R. SINGLETARY

DELEGATES FROM YORK.

A. H. WHITE
WM. BLACKBURN WILSON
J. STUB BRICE
J. F. ASHE

ARTICLES OF AMENDMENTS

Article I of Amendments to the Constitution.

The General Assembly shall provide by law for the condemnation, through proper official channels, of all lands necessary for the proper drainage of the swamp and low lands of this State, and shall also provide for the equitable assessment of all lands so drained, for the purpose of paying the expenses of such condemnation and drainage.

1900 (23) 571; 1901 (23) 615.

Article II of Amendments to the Constitution.

The General Assembly of this State may enact local or special laws concerning the laying out, opening, altering or working roads or highways, and concerning the providing for the age at which citizens shall be subject to road duty, and concerning drainage.

1904 (24) 676; 1905 (24) 830.

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1

Books.—The Judge of Probate shall, in addition to the books required by law, keep a book, properly indexed, in which shall be entered the titles of all cases instituted in his Court, with proper entries under each, denoting the papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings. Also, a calendar of all cases which are pending in his Court, until the same shall be disposed of by final decree or order.

Applied in *In re Willcox*, 162 S. C. 133,
160 S. E. 260 (1931).

2

Sheriff compelled to return process.—At any time after the day when it is the duty of the Sheriff or other officer to return, deliver or file any process, undertaking, order or other paper, by the provisions of the Code of Procedure, any party entitled to have such act done, may serve on the officer a notice to return, deliver or file such process, undertaking, order or other paper, as the case may be, within ten days; or show cause, at a time to be designated in said notice, why an attachment should not issue against him.

3

Guardian ad litem—decree—against infants.—No person other than the general guardian of an infant shall be appointed guardian *ad litem*, either on the application of the infant or otherwise, who has an interest adverse to that of the infant, or who is connected in business with the attorney or counsel of the adverse party; and no decree against an infant or other person not *sui juris* shall be made, except upon proof of the facts necessary to support such decree.

4

Duty of guardian ad litem.—It shall be the duty of every attorney or other officer of this Court to act as the guardian *ad litem* of any infant defendant, in any suit or proceeding, whenever appointed for that purpose by an order of

the Court. And it shall be the duty of the guardian *ad litem* to examine into the circumstances of the case, so far as to enable him to make the proper defense for the protection of the rights of the infant.

5

Summons.—After a petition or complaint has been filed, it shall be the duty of the Judge of Probate to issue his summons, directed to each of the defendants named in said petition or complaint, notifying them of the filing of such petition or complaint, and that unless they plead thereto within twenty days from the time of such summons, judgment will be rendered against them for the relief demanded. Such summons shall be served in the same manner and according to the same rules as are prescribed by law in the case of a summons in the Court of Common Pleas.

Publication.—And, in case any of the parties defendant are absent from or reside beyond the limits of the State, or whose residence is unknown, upon such fact being made to appear to the satisfaction of the Judge of Probate, by affidavit, such summons shall be published, in the same manner as required by law, in the case of the publication of a summons for an absent defendant in the Court of Common Pleas.

Personal service.—Personal service on any absent party, under an order of the Court, shall be deemed sufficient without publication.

6

Pleadings—time of trial.—All pleadings in the Court of Probate must be in writing; and the only pleading necessary on the part of the defendant shall be an answer, in which issues both of law and fact may be raised.

When the petition or complaint is verified, the answer must also be verified.

Each case shall stand for trial at the session commencing on the first Monday in the month after the day on which the time for answering shall expire; but may, on just cause shown, be continued to such other day as may be appointed by the Probate Judge: *Provided*, however, That the case may be tried on any day after the time to answer has expired, with the consent of all parties interested, or their attorneys.

7

No argument after decision.—Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard and the opinion of the Court has been pronounced.

8

Manner of preparing papers.—All pleadings and other proceedings shall be written on each page of legal cap paper. If more than two pages are used, they shall be fastened at the top, so as to be read continuously. Papers shall be folded from the bottom, in four equal folds, and endorsed with the style of the Court, the names of the parties, the nature of the paper and the name of the attorney.

9

Consent must be in writing.—No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause shall be binding, unless the same shall have been reduced to the form of an order by consent, and entered; or unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

10

Proof of service.—Where the service of the summons, or notice accompanying the same, if any, shall be made by any person other than the Sheriff, it shall be necessary for such person to state in his affidavit of service, when and at what particular place he served the same, and that he knew the person served to the person mentioned and described in the summons as defendant therein; and also to state that he left with the defendant a copy of the paper so served.

11

Extension of time to answer.—No order extending the time to answer shall be granted, unless the party applying for such order shall satisfy the Judge of Probate, by affidavit, that there are grounds therefor; unless such extension of time has been agreed upon, in writing, or orally in open Court, by the parties interested, or their attorneys.

12

Motion to correct pleadings.—Motions to strike out of any pleading matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being “so indefinite or uncertain, that the precise nature of the charge of defense is not apparent,” must be noticed before answering the pleadings.

13

Judgment of appellate court.—When a judgment rendered in the Circuit Court or in the Supreme Court, upon an appeal from the Judge of Probate, is certified to the Judge of Probate, the same shall be recorded with other judgments of the Probate Court, with proper references made to the judgment appealed from.

14

Orders after issue joined.—After issue has been joined in any case in the Court of Probate, no order shall be granted therein except at the time appointed for the hearing thereof, unless two days’ notice in writing has been given to the parties to be affected thereby, or their attorneys, where they reside in the same county; but where they reside in different counties, four days’ notice shall be given.

15

Rules for circuit court to govern.—In all cases not provided for by any of the foregoing Rules, the Rules of the Circuit Court, so far as they can be made applicable, shall govern.

16

When to take effect.—These Rules shall go into operation on the first day of July, A. D. 1879.

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Rules of Practice for the Circuit Courts of South Carolina

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1

Statutes and rules.—Every Clerk of the Circuit Court who cannot produce the Statutes at large, the Rules of Court and the Bar Calendar, when required, shall be fined ten dollars for each default.

2

Clerk to keep books.—The several Clerks of the Circuit Courts shall keep in their respective offices a book, properly indexed, in which shall be entered

the titles of all civil papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings; also, an index of all undertakings filed in the office, stating in appropriate columns, the title of the cause or proceeding in which it is given (with a general statement of its condition) or a reference to a Statute under which it is given, the date, when and before whom approved, and when filed, with a statement of any disposition or order made of or concerning it; and such other books, properly indexed, as may be necessary to enter the minutes of the Court, record judgments, enter orders and all necessary matters and proceedings.

3

Entry of judgment.—The Clerk shall not enter, without special leave of the Court, any judgment until the expiration of five days after the Court has adjourned for the term.

Proper entry of judgment is presumed.—It is presumed that a judgment is not entered until after expiration of five days. Nor is the defendant presumed to have notice of a default judgment until such entry, and a motion to set it aside noticed within one year after entry is within time. *Farmers' & Merchants' Bank v. Holiday*, 108

S. C. 116, 93 S. E. 333 (1917). See also, *British & American Mortg. Co. v. Strait*, 84 S. C. 141, 65 S. E. 1038 (1909).

Applied in *Gilfillin v. Rector*, 131 S. C. 84, 126 S. E. 761 (1925).

Cited in *Harvey v. Gibson*, 190 S. C. 98, 2 S. E. (2d) 385 (1939).

4

Sheriff to file affidavits on arrests.—The Sheriff shall file with the Clerk the affidavits on which an arrest is made, within five days after the arrest.

5

Sheriff compelled to return process.—At any time after the day when it is the duty of the Sheriff or other officer to return or deliver or file any process, undertaking, orders, or other papers, by the provisions of the Code of Procedure, any party entitled to have such act done may serve on the officer a notice to return, deliver or file such process, undertaking, order or other paper, as the case may be, within ten days, or show cause, at a time to be designated in said notice, why attachment should not issue against him.

6

Appointment of guardian ad litem.—No person other than the general guardian of an infant shall be appointed guardian *ad litem*, either on the application of the infant or otherwise, who is not fully competent to understand and protect the rights of the infant; who has any interest adverse to that of the infant, or who is connected in business with the attorney or counsel of the adverse party; nor shall the attorney of the adverse party represent the guardian *ad litem*. And the same rule as to appointment of guardian *ad litem* shall apply to other persons incapable of representing themselves.

7

Change of attorney.—An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon the application of the client, by order of the Circuit Judge, and not otherwise.

Continuance may be denied on counsel's withdrawal.—Refusal of continuance because of withdrawal of counsel is not an abuse of discretion. *Brunson v. Hamilton Ridge Lumber Co.*, 122 S. C. 436, 115 S. E. 624 (1923).

Applied in *Cusack v. Southern Ry. Co.*, 116 S. C. 143, 107 S. E. 30 (1921); *Poore v. Poore*, 105 S. C. 206, 89 S. E. 569 (1916).
Cited in *Ex Parte Rowley*, 200 S. C. 174, 20 S. E. (2d) 383 (1942).

8

Dress of attorneys.—The habit of the gentlemen of the Bar and all officers of the Court except constables shall be black coats; and no gentleman of the Bar shall be heard if otherwise habited; and it shall be the duty of the Sheriff to attend to the execution of this Rule.

9

Attorneys and other officers not to be sureties.—No attorney or other officer of the Court shall become surety upon any recognizance in the Court of General Sessions, or upon any undertaking in the Court of Common Pleas. Attorneys and other officers violating this rule shall be punished as for a contempt of Court.

Stated in *Safran v. Safran*, 107 S. C. 452, 93 S. E. 140 (1917).

10

Security for costs—form of undertaking.—If the plaintiff resides beyond the State, security for costs may be required. Whenever security for costs shall be required the following form and no other shall be regarded as a compliance with the order:

STATE OF SOUTH CAROLINA,
.....County.
A. B.
vs.
C. D.

Complaint For

I (or we as the case may be) acknowledge myself (or ourselves) liable for the costs of this case in the sum dollars, and consent that if the plaintiff fail to recover, the defendant may have execution for his costs against me (or us, as the case may be) for not exceeding said sum.

Given under hand this day of A. D. 19.....
E. F.

Witness:

Approved:

G. H.

C. C. P. & G. S.

The amount to be inserted therein shall be fixed by the Clerk after careful examination of the whole case: *Provided, however*, That if the same be, in the opinion of any party to the cause, insufficient, application may be made on notice, as in the case of any other interlocutory application, for an order fixing the amount for which such security, or any additional security shall be given.

Deposit in lieu of undertaking.—This rule shall not be construed as to prevent the plaintiff or others for him when security for costs is required from the deposit of a sum of money, as authorized by the Act entitled “An Act to authorize the deposit of money in proceedings in the Courts of this State as security in lieu of bonds and undertakings,” approved 17th February, 1897; the sum to be deposited to be fixed by the Clerk as hereinbefore provided.

This rule is constitutional.—The South Carolina statute and rule of court requiring nonresidents to give security for costs are not unconstitutional as abridging the privileges and immunities of citizens of other states, since their provisions relate only to residence and not to citizenship. *Cummings v. Wingo*, 31 S. C. 427, 10 S. E. 107 (1889).

Security is based on plaintiff's nonresidence.—Where the motion for security for costs was not based upon the ground that the plaintiffs, or either of them, resided beyond the State, this rule was held not applicable. *Griffin v. Allendale Bank*, 170 S. C. 212, 170 S. E. 149 (1933).

And can only be required in circuit court.—*C. C. & A. R. Co. v. Earle*, 13 S. C. 44 (1880).

It may be required from relator. *Tharin v. Seabrook*, 6 S. C. 113 (1875).

Form must be as prescribed by rule.—Where court granted nonsuit unless non-resident plaintiffs filed security for costs, and instrument filed was not in form prescribed by this rule, nor witnessed and approved by clerk, nonsuit became absolute on expiration of time fixed for compliance with court order. *Lamborn v. Merchants' Grocery Co.*, 157 S. C. 150, 154 S. E. 94 (1930).

Instrument must be witnessed and approved by clerk of court. *Wilson v. Muehlberger*, 158 S. C. 58, 155 S. E. 230 (1930).

With amount fixed on its face.—Where, on motion of defendant, a rule for security of costs was entered providing that the

amount for which the surety should be bound should be inserted in the bond, a bond, with affidavit of sureties that each is worth a sum certain, is not a compliance with the rule where no amount is fixed on its face. *Taylor v. Dempsey*, 66 S. C. 513, 45 S. E. 78 (1903).

And entered within prescribed time.—An order requiring security for costs to be entered within a prescribed time, and that plaintiff be nonsuited on default is final after the expiration of the time limited, and cannot be reversed or modified by the succeeding judge. *Cummings v. Wingo*, 31 S. C. 427, 10 S. E. 107 (1889); *Bomar v. Asheville & S. R. Co.*, 30 S. C. 450, 9 S. E. 512 (1889).

Sufficiency of security.—Security for costs is sufficient whereby the parties acknowledge themselves liable for the costs of the case and consent that, if plaintiffs fail to recover, defendant may have execution for his costs against them. *Dunton v. Harper*, 64 S. C. 338, 42 S. E. 153 (1902).

For additional related cases, see *Dulany & Co. v. Elford & Dargan*, 22 S. C. 304 (1885); as to when succeeding judge may or may not grant further time to give security, see *Williams, Black & Co. v. Connor*, 14 S. C. 621 (1881); *Burke v. Dillingham*, 8 Rich. (42 S. C. L.) 256; as to what is not a compliance with order, see *Willis v. Potter*, 9 Rich. (43 S. C. L.) 411; as to how security may be enforced, see *Earle v. Cureton*, 13 S. C. 19 (1880); *Stuckey v. Crosswell*, 12 Rich. (46 S. C. L.) 273.

Argument and request to charge.—Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced: *Provided*, No argument shall be had on any objection to the admissibility of evidence unless especially re-

quested by the presiding Judge; nor shall one attorney interrupt another in the course of his argument without first obtaining the permission of the Court.

Amended Dec. 18, 1896.—Before the argument of the case commences the counsel on either side shall read and submit to the Court in writing such propositions of law as they propose to rely on, which shall constitute the request to charge: *Provided, however,* That nothing herein contained shall prevent either counsel at the close of the argument from submitting such additional requests as may be suggested by the course of the argument, or from withdrawing any or all of the requests submitted at the beginning of the argument. When required by the Court, counsel shall note in the margin opposite each request the authorities relied on in support of the propositions of law therein contained, and also produce the same.

Requests must be presented before argument to be entitled to the consideration of the court. Those suggested during the course of the argument should be presented at the close. *State v. Glenn*, 88 S. C. 162, 70 S. E. 453 (1911).

Reading requests is for court's benefit.—The provision that before the argument of the case counsel on either side shall "read and submit" to the court any requests to charge is for the benefit of the court. Where the judge did not require counsel to read the requests submitted, counsel was not guilty of such violation of this rule as to destroy his right to a new trial because of the judge's error in inadvertently failing to pass on the charges. *Herskovitz v. Baird*, 59 S. C. 307, 37 S. E. 922 (1901).

Requests must be submitted.—*McPherson v. McPherson*, 21 S. C. 261 (1884); *Youngblood v. South Carolina & G. R. R. Co.*, 60 S. C. 9, 38 S. E. 232 (1901); *Lowrimore v. Palmer Mfg. Co.*, 60 S. C. 153, 38 S. E. 430 (1901); *State v. Wine*, 58 S. C. 94, 36 S. E. 439 (1900); *Wagener v. Kirven*, 56 S. C. 126, 34 S. E. 18 (1899).

In writing.—This rule is not complied with by reading extracts from statutes and orally requesting that the same be charged. *State v. Davis*, 50 S. C. 405, 27 S. E. 905 (1897).

As requested by judge.—A trial judge may refuse to consider a request not submitted as required. *Morrison v. Mut. Benev. Ass'n*, 78 S. C. 398, 59 S. E. 27 (1907); *Cutter v. Mallard Lumber Co.*, 99 S. C. 231, 83 S. E. 595 (1914).

Judge may refuse part of charge.—If any part of a request to charge is unsound, the judge may refuse to charge it. *Earle v. Poat*, 63 S. C. 439, 41 S. E. 525 (1902).

Reversible error in refusal of lengthy requests.—The action of court in criticizing requests to charge tendered in compliance

with this rule because of their length and number, in stating that it was impossible for any human being "to have gone over them with any degree of intelligence", and in declining to consider such request at all was ground for reversal. *Powers v. Rawles*, 119 S. C. 134, 112 S. E. 78 (1922).

Presumption on judge's failure to respond to request.—A trial judge's failure to respond to a request raises the presumption that it was refused for noncompliance with this rule. *Morrison v. Mut. Benev. Ass'n*, 78 S. C. 398, 59 S. E. 27 (1907); *Cutter v. Mallard Lumber Co.*, 99 S. C. 231, 83 S. E. 595 (1914).

Where a request to charge is tendered orally at the conclusion of the court's charge and not in conformity with this rule, it will be assumed that the failure to respond to it was based on noncompliance with the rule. *Union Bleaching, etc., Co. v. Barker Fuel Co.*, 124 S. C. 458, 117 S. E. 735 (1923).

Failure to give requested charge may not preclude new trial.—Counsel handed to the court requests to charge, without reading them as required by this rule, and the judge inadvertently omitted to pass on them to the jury. Counsel was present and heard the charge to the jury, but did not call the judge's attention to his failure to give the charges requested. It was held that since a judge should not read an erroneous charge in the presence of the jury, and since it did not appear that counsel knew why his requests were not charged, his silence did not preclude his right to a new trial on account of the omission. *Herskovitz v. Baird*, 59 S. C. 307, 37 S. E. 922 (1901).

Refusal to charge requests already read into record.—Refusal to charge requests, where counsel stated they had none but had read theirs into record, was held not error.

Youmans v. Charleston & W. C. Ry. Co., 175 S. C. 99, 178 S. E. 671 (1935).

Court response to oral request.—When court responds to oral request for instruction, it is subject to all rules of law applicable to formal requests to charge, though it might have refused request for noncompliance with this rule. *Hall v. Aiken County*, 132 S. C. 420, 129 S. E. 160 (1925).

As to time to present request, see *State v. Hutchings*, 24 S. C. 142 (1886).

As to necessity for request for more specific statement of law, see *Smith v. South Carolina & G. R. R. Co.*, 62 S. C. 322, 40 S. E. 665 (1902); *Kirby v. Southern Ry.*, 63 S. C. 494, 41 S. E. 765 (1902).

Applied in *State v. Ownes*, 79 S. C. 125, 60 S. E. 305 (1908).

Cited in *State v. Springfield*, 86 S. C. 318, 68 S. E. 563 (1910); *State v. Smith*, 200 S. C. 188, 20 S. E. (2d) 726 (1942); *State v. Deas*, 202 S. C. 9, 23 S. E. (2d) 820 (1943).

12

Manner of preparing papers.—All original pleadings and other proceedings shall be written on legal cap paper, or printed in accordance with the requirements of Rule 6 of the Supreme Court.

Amended Dec. 17, 1895.—Typewriting will be permitted only when black indelible ink is used, with ordinary spacing upon linen paper weighing not less than four pounds to five hundred single cap sheets, eight by thirteen inches in size; and each page of typewriting shall be numbered and initialed by the attorney, officer or person signing such paper.

It shall be the duty of the Clerk of the Court to see that papers are numbered and initialed as herein prescribed before filing.

Papers in handwriting or in typewriting must have a blank margin of an inch and a half on the left. If more than two pages of handwriting or typewriting be used, they shall be fastened at the top so as to read continuously.

Papers in handwriting or in typewriting shall be folded from the bottom in four equal folds and endorsed with the style of Court, the venue, the name of the parties, the nature of the paper, and the name of the attorney or officer.

The object of this rule is to prevent mistake or imposition. *Edgefield Mfg. Co. v. Maryland Cas. Co.*, 78 S. C. 73, 58 S. E. 969 (1907).

Term "proceedings" embraces testimony

de bene esse.—In a broad sense, the term "proceedings" used in this rule would embrace the taking of testimony *de bene esse*. *Edgefield Mfg. Co. v. Maryland Cas. Co.*, 78 S. C. 73, 58 S. E. 969 (1907).

13

Pleadings to be legibly written and endorsed.—All pleadings and other proceedings, and copies thereof, shall be fairly and legibly written or printed, and endorsed with the title of the cause; and if not so written or printed and endorsed, the Clerk shall not file the same, nor will the Court hear any motion or application founded thereon.

14

Consent must be in writing.—No agreement or consent between the parties, or their attorneys, in respect to the proceedings in a cause shall be binding, unless the same shall have been reduced to the form of an order by consent and entered; or unless the evidence shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel;

or unless made in open Court and noted by the presiding Judge or the Stenographer on his minutes by the direction of the presiding Judge.

Rule is inapplicable where agreement effected.—This rule does not apply where an agreement is admitted or has been carried into effect. *Ex parte Pearson*, 79 S. C. 302, 60 S. E. 706 (1908); *Lummus Cotton Gin Co. v. Counts*, 98 S. C. 136, 82 S. E. 391 (1914).

Marking case "heard" is not written agreement.—The marking of a case "heard" by the judge on the calendar in open court

was not an agreement in writing not to require exceptions to referee's report to be filed within ten days, nor was it a memorandum of such agreement noted by the presiding judge with the consent of plaintiff's attorney under this rule. *Brown v. Rogers*, 71 S. C. 512, 51 S. E. 257 (1905).

Cited in *Brewton v. Inter-Carolinas Motor Bus Co.*, 167 S. C. 151, 166 S. E. 85 (1932).

15

Orders by default taken by counsel.—When any order is obtained by default the counsel obtaining the same shall endorse his name as counsel on the paper containing the proof of notice, and the Clerk in entering the order shall specify the name of such counsel.

16

Master or referee to file report in clerk's office.—The Master or Referee in all cases of reference, having prepared his report, shall file the same in the Clerk's office, and at the same time give notice to the attorneys engaged in the cause of such filing, and the party who shall be dissatisfied therewith shall, within ten days after such notice, serve his exceptions thereto. Such notice of the filing of the Master's or Referee's report shall be deemed and taken as service of such report.

Applied in *Fogel v. McDonald*, 159 S. C. 506, 157 S. E. 830 (1931).

17

Notice of appearance or retainer.—Service of notice of appearance or retainer generally by attorney for the defendant shall in all cases be deemed an appearance, and the plaintiff on filing such notice, at any time thereafter, with proof of service thereof, may have the appearance of the defendant entered as of the time when such notice was served.

Appearance means general appearance.—*Appearance as used in this rule means general appearance.* *Hensley v. Green*, 36 F. Supp. 671 (1940).

18

Numbering causes of action or ground of defense.—In all cases of more than one distinct cause of action, defense, counterclaim or reply, each shall be separately stated and numbered; and where the defendant intends to set up a counterclaim it shall be distinctly entitled and designated as such.

Demurrer.—A demurrer must, in every case, be accompanied by a certificate of the counsel filing it that it is meritorious, and not intended merely for delay.

Motion to dismiss complaint.—A motion to dismiss a complaint or answer on the ground that the complaint does not state facts sufficient to constitute a cause of action, or the answer does not state facts sufficient to constitute a defense, may be made orally, but the grounds upon which said motion is made must be reduced to writing by the counsel submitting the same, or taken down by the Stenographer under the direction of the Court, stating wherein the pleading objected to is insufficient.

Amended Dec. 17, 1895.—A motion for a nonsuit must be reduced to writing by the moving counsel, or by the Stenographer, under the direction of the Court, stating the grounds of the motion.

Separate tort counterclaims cannot be jumbled in single statement. *Miller v. Johnson*, 126 S. C. 321, 119 S. E. 902 (1923).

Unstated grounds are not considered on appeal.—Grounds not stated in motion for nonsuit and not passed on by the court will not be considered on appeal. *Graham v. Seignious*, 53 S. C. 132, 31 S. E. 51 (1898); *Sloan v. Courtenay*, 54 S. C. 314, 32 S. E. 431 (1899); *Shull v. Caughman*, 54 S. C. 203, 32 S. E. 301 (1898); *Burns v. Southern Ry. Co.*, 61 S. C. 404, 39 S. E. 567 (1901); *Hicks v. Southern Ry. Co.*, 63 S. C. 559, 41 S. E. 753 (1902).

Nor single ground alleging insufficient cause of action.—Where the only ground for demurrer is that it does not state a sufficient cause of action, it cannot be considered on appeal. *Lawson v. Gee*, 57 S. C. 502, 35 S. E. 759 (1900).

Nor grounds for demurrer not raised at trial.—The Supreme Court cannot consider whether respondent complied with this rule by submitting grounds of demurrer in writing where the "case" fails to show such question was made on circuit. Nor can the court consider additional defects not brought to the attention of the court below to sustain the demurrer. *Elkins v. South Carolina & G. R. Co.*, 59 S. C. 1, 37 S. E. 20 (1900).

This rule shuts off the consideration of any other grounds of demurrer, except those brought to the attention of the circuit

judge. *Norris v. Hartford Fire Ins. Co.*, 55 S. C. 450, 33 S. E. 566 (1899); *Hickson v. Early*, 62 S. C. 42, 39 S. E. 782 (1901).

Proper allegation of insufficient cause of action.—It is sufficient compliance with this rule to serve a written demurrer stating that the complaint does not state facts sufficient to constitute a cause of action, and then to submit at the hearing the specific grounds of objection in writing. *Riggs v. Home Mut. Fire Protection Ass'n*, 61 S. C. 443, 39 S. E. 614 (1901); *Exchange Bank v. Bennett*, 193 S. C. 320, 8 S. E. (2d) 515 (1940).

Sufficiency of demurrer.—In *McLeod v. Southern Ry. Co.*, 188 S. C. 14, 198 S. E. 425 (1938), the court refused to hold a demurrer insufficient because of an alleged failure to state wherein the pleading was insufficient, when there was nothing in the record to show that the specific grounds were not argued before the circuit judge, nor to show that the question was either raised or passed upon by the circuit judge.

Applied in *Bushardt v. United Invest. Co.* 121 S. C. 324, 113 S. E. 637 (1922); *National Loan, etc., Bank v. Argo Develop. Co.*, 141 S. C. 72, 139 S. E. 183 (1927); *Bailey v. Cooley*, 153 S. C. 78, 150 S. E. 473 (1929); *Duncan v. Duncan*, 93 S. C. 487, 76 S. E. 1099 (1913); *Co-operative Pub. Co. v. Walker*, 61 S. C. 315, 39 S. E. 525 (1901); *Elliott v. Pollitzer*, 24 S. C. 81 (1886); *Miles v. Thrower*, 181 S. C. 392, 187 S. E. 818 (1936).

19

Time to answer not extended without certificate of merits—subsequent extension.—No order extending the time to answer or demur to a complaint shall be granted unless the party applying for such order shall present to the Judge to whom the application shall be made a certificate of the attorney or counsel retained to defend the action, that, from the statement made to him by the defendant, he verily believes that the defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint or to some part thereof. And if any extension of time to answer or

demur has been previously granted by stipulation or order, the fact shall be stated in the certificate.

The purpose of this rule is to maintain the status of the party applying under it by granting him an extension of time to plead. It could never be construed to give a judge the power to restore to one applying under it a right already lost, or to give a right which the party never had. *Stewart v. Ficken*, 165 S. C. 396, 164 S. E. 14 (1932).

Absence of parties from United States.—This rule does not apply where two of the

defendants are out of the United States, and the other two are dependent on them for information necessary for their defense. *Fishburne v. Minott*, 72 S. C. 567, 52 S. E. 648 (1905).

For additional related cases, see *Merchants' Nat. Bank v. Hodges*, 105 S. C. 448, 90 S. E. 29 (1916); *Gales v. Poe*, 107 S. C. 482, 93 S. E. 189 (1917); *Huenfeld Co. v. Sims*, 126 S. C. 143, 117 S. E. 413 (1923).

20

Motions to amend pleadings.—Motions to strike out of any pleading matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being "so indefinite or uncertain, that the precise nature of the charge or defense is not apparent," must be noticed before demurring or answering the pleading, and within twenty days from the service thereof.

This rule applies to an answer, and a motion to strike out part of an answer is not too late when made after six terms and two mistrials, after submitting an argument on a similar motion to a judge who did not rule on it, but who declared a mistrial. *Johnson v. Finger*, 102 S. C. 354, 86 S. E. 673 (1915); *Lenhardt v. French*, 68 S. C. 297, 47 S. E. 382 (1904).

Since time for answering may be extended thereby.—The time for answering is fixed by statute. It can be extended only by consent or by order obtained in the manner prescribed by the statutes and the rules of court. *Johnson v. Finger*, 102 S. C. 354, 86 S. E. 673 (1915).

Order may be granted at chambers.—Under this rule a circuit judge can grant an order at chambers striking irrelevant matter from a pleading, the authority to hear the motion to strike necessarily implying power to decide. *Guignard v. First Baptist*

Church, 80 S. C. 491, 61 S. E. 1003 (1908).

Extending time for pleading does not extend time for motion.—A stipulation extending the time for "answering, pleading, or demurring" to a complaint does not extend the time within which to make a motion to make the complaint more definite and certain. *Whaley v. Lawton*, 53 S. C. 580, 31 S. E. 660 (1898).

For additional related cases, see *State v. Norris*, 15 S. C. 242 (1881); *Cohrs v. Fraser*, 5 S. C. 351 (1874); *Ruff v. Columbia & G. R. Co.*, 42 S. C. 114, 20 S. E. 27 (1894); *Long v. Hunter*, 48 S. C. 179, 26 S. E. 228 (1897); *Savage v. Sanders*, 51 S. C. 495, 29 S. E. 248 (1898).

Applied in *Williams v. Continental Cas. Co.*, 155 S. C. 543, 152 S. E. 703 (1930); *Whitaker v. Manson*, 88 S. C. 419, 70 S. E. 1009 (1911); *Lawrence v. Lawrence*, 81 S. C. 126, 62 S. E. 9 (1908).

21

Defense of plene administravit.—The defense of *plene administravit* shall not be effected unless the party making such defense shall file with the pleading, on oath, a full and particular account of the administration of the estate, with a certified copy of the inventory and appraisement; or, if the party be charged as executor of his own wrong, a full statement, on oath, of all the assets which have come into his possession, and the value thereof, and an account showing the manner in which the same may have been disposed of.

Applied in *Willis v. Tozer*, 44 S. C. 1, 21 S. E. 617 (1895).

22

Real owner admitted to defend action against tenant.—Where a tenant is sued for land of which he is in possession, the real owner may, on motion, be admitted as a defendant to the action, and shall be entitled to the service of a copy of the complaint, and to answer or demur thereto, as if he had been the original defendant.

Whenever an action to recover the possession of real estate shall be brought against any person claiming to be the owner thereof, and such person intends to vouch any grantor under and through whom he claims title, he shall vouch such person in writing and before the time for answering has expired; and the person so vouched may, if he desires, be permitted to apply to the Judge of the Circuit Court in which the action is brought, within twenty days from being so vouched, to come in and make such additional defenses as he may desire.

Rule applies only to suits for recovery of realty.—This rule applies only to suits to recover possession of real estate, and not

to suits for damages for alleged wrongful trespasses thereon. *Nelson v. Camp Mfg. Co.*, 44 F. Supp. 554 (1942).

23

Venire and summons for jurors.—To all writs of *venire* for jurors, the Sheriff and his deputies shall make a return, on oath, before the Clerk of the Court from which the *venire* issues, including in *one* class the names of those who have been summoned personally; in the *second* class, of those for whom summonses have been left at their house; in the *third* class, of those who could not be found. The summonses for each juror shall state the day, the hour, and the Court at which he is to appear, the penalty for default, and, also, whether he is to serve as a grand or petit juror.

Framing issues is discretionary in equity.—In equitable actions, framing of issues is a matter of discretion. *Keese v. Parnell*,

132 S. C. 360, 128 S. E. 172 (1925); *Keese v. Parnell*, 134 S. C. 207, 128 S. E. 172, 132 S. E. 620 (1925).

24

Defaulting jurors—judgment against.—If any juror, in attendance upon the Court, shall refuse or neglect to attend punctually, and to answer to his name whenever the same shall be called, the Clerk shall note such default, and the defaulter shall forthwith be served with a rule to show cause why he should not be fined therefor. Upon the adjournment of each term of the Court, the Clerk shall cause to be served by the Sheriff on each and every juror noted for non-attendance at that Court, a notice, requiring him to show cause by affidavit, at ten o'clock on the first day of the next regular term, why he should not be fined, according to law, for failing to attend and serve as a grand or petit juror, as the case may be.

And on or before the first day of the next regular term the Sheriff shall make return of all such notices to the Clerk, who shall, after entering the same on the Contingent Docket, deliver them to the Attorney General or

Solicitor, and Attorney General or Solicitor shall, upon the call of the Docket, move for the judgment of the Court thereon.

25

Jury in criminal cases.—In the empanelling of a jury in criminal cases, where the right of peremptory challenge is claimed and allowed a child under ten years of age shall, in the presence of the Court, draw one from the names of all the jurors in attendance, which one, having answered, shall be presented to the accused; and so on until, in regular course, the panel is exhausted or a jury formed.

Alternate objections on waiver of rule.—When it is agreed between the State and the defense to waive this rule and to object alternately to the full box, the State may object to one originally drawn after declining to object twice and after three new jurors have been put in the box to fill defendant's

objections. *State v. Fullbright*, 88 S. C. 126, 70 S. E. 445 (1911); *State v. Tidwell*, 100 S. C. 248, 84 S. E. 778 (1915).

Applied in *State v. Campbell*, 35 S. C. 28, 14 S. E. 292 (1892); *State v. Cardoza*, 11 S. C. 195 (1878); *State v. White*, 15 S. C. 381 (1881).

26

Common pleas calendar.—No clerk shall enter a cause on the Calendar until the pleadings are made up. And no cause shall be entered on the Calendar except by the Clerk or his Deputy.

No cause shall be on more than one Calendar at the same time; except in cases in which some of the defendants have pleaded and others have made default.

Causes may be entered on Docket 3 at any time after the time for answering has expired and before the beginning of the term; after the beginning of the term no cause shall be entered on said Docket by the Clerk or his Deputy except by leave of the Court.

Where an issue has been settled by an order of the Court, the Clerk shall give it a place on the Calendar according to the date of the order.

The Clerk shall preserve the Calendars as records of the Court. He shall not only number the causes thereon but shall indicate the number of terms they may have been at issue; and he shall, also, in a separate column, copy the memoranda of the disposition of the case at the previous term.

During the daily sessions of the Court the Calendars shall not be subject to the inspection of the Bar; but it shall be the duty of the Clerk to make a copy of the several Calendars, in a Book designated "Bar Calendar," for the use of the Bar.

Applied in *Steffens v. Bulwinkle*, 48 S. C. 357, 26 S. E. 666 (1897).

27

Motions for continuance.—No motion for the postponement of trial beyond the term, either in the Common Pleas or General Sessions, shall be granted, on account of the absence of a witness, without the oath of the party, his counsel or agent, to the following effect, to wit: That the testimony of the witness is material to the support of the action, or defense of the party

moving; that the motion is not intended for delay; but is made solely because he cannot go safely to trial without such testimony; that he has made use of due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the Court that his motion is not intended for delay. In all such cases where a writ of subpoena has been issued, the original shall be produced, with proof of service, or the reason why not served, endorsed thereon, or attached thereto; or, if lost, the same proof shall be offered, with additional proof of the loss of the original subpoena.

A party applying for such postponement on account of the absence of a witness shall set forth under oath in addition to the foregoing matter what fact or facts he believes the witness if present would testify to, and the grounds of such belief.

Continuance is discretionary with judge.—A motion for continuance is addressed to the sound discretion of the trial judge. *King v. Smith*, 148 S. C. 419, 146 S. E. 237 (1929).

Particularly where witness' facts are admitted.—It is not an abuse of discretion in a trial judge to order a homicide case to trial in the absence of a witness who has been bound over and in attendance, but has left against the protest of defendant's counsel, after issuance of bench warrant for the witness at instance of defendant's counsel but before return thereon, in the absence of any showing according to this rule of the materiality of the witness and what facts he would swear to, the solicitor having agreed to admit what the witness would swear to. *State v. Pope*, 78 S. C. 264, 58 S. E. 815 (1907).

And judge's discretion is not disturbed unless abused.—The Supreme Court will not disturb a judge's ruling unless an abuse of discretion is shown. *State v. Smith*, 200 S. C. 188, 20 S. E. (2d) 726 (1942).

Motion for continuance rests in trial court's discretion, which discretion must be shown to be abused to warrant interference. *Merchants' Fertilizer & Phosphate Co. v. American Land & Bldg. Corp.*, 165 S. C. 394, 164 S. E. 17 (1932).

Judge's ruling will not be disturbed unless manifestly erroneous. *King v. Smith*, 148 S. C. 419, 146 S. E. 237 (1929).

Motion denied if due diligence is not employed.—Refusal of motion for continuance based on failure of witness to attend, which witness had not been arrested or bound over, the crime having been committed in June, case continued at June term and tried at October term, and warrant for witnesses issued ten days before trial, is not an abuse of discretion. *State v. Hiers*, 107 S. C. 411, 93 S. E. 124 (1917); *State v. Waring*, 109 S. C. 52, 95 S. E. 143 (1918); *State v. Box*, 66 S. C. 402, 44 S. E. 969 (1903).

Merely subpoenaing witnesses does not show due diligence.—The mere subpoenaing of witnesses by defendant in homicide case does not show due diligence in procuring their attendance. *State v. Hutto*, 66 S. C. 449, 45 S. E. 13 (1903).

Applied in *Ilderton v. Charleston Consol. Ry., etc., Co.*, 113 S. C. 91, 101 S. E. 282 (1919).

Stated in *King v. Smith*, 148 S. C. 419, 146 S. E. 237 (1929).

Cited in *Coffey v. Jenkins*, 117 S. C. 321, 109 S. E. 117 (1921); *State v. Gilstrap*, 205 S. C. 412, 32 S. E. (2d) 163 (1944).

Issues in equity causes—how tried by jury.—In equity cases where a trial by jury of issues of fact may be desired, the party desiring a jury trial shall within ten days after issue joined give notice in writing of his intention to move the Court, upon the first day of the next term, immediately after the call of Docket No. 3, for an order requiring that the whole issue of certain specified questions of fact involved be tried by a jury. With the notice of motion shall be served a copy of the questions of fact proposed to be submitted to the jury for trial and in proper form to be incorporated in the order. (If the adverse party desires to submit any other issue of fact to the

jury, he shall within four days from the service of such motion upon him notify the party giving the notice, in writing, of his intentions to move the Court, at the same time, to submit certain issues to the jury for trial, specifying the issues.)

The Court on hearing the motion may settle the issues, if they are deemed necessary.

Compliance with rule is necessary.—Where a party, desiring that certain issues be submitted to the jury in a proceeding for the appointment of an administrator, failed to comply with this rule on appeal in the circuit court, his exceptions to the court's failure to submit such issues to a jury will be overruled on appeal to the Supreme Court. *Ex parte Williams*, 98 S. C. 211, 82 S. E. 402 (1914).

Meaning of "after issue joined".—In *Meier v. Kornahrens*, 113 S. C. 270, 102 S. E. 285 (1920), the court held that the phrase, "after issue joined," must be construed to mean "when the issue on appeal is joined". *Johnson v. Johnson*, 160 S. C. 158, 158 S. E. 264 (1931).

Framing issues of fact is in court's discretion.—In a suit in equity for a division of crops between partners or joint owners, it is not error to refuse to submit issues to a jury where no abuse of discretion is shown, as this rule gives the court discretionary power to frame issues of fact for a jury in all equity causes. *Neal v. Suber*, 56 S. C. 298, 33 S. E. 463 (1899).

Judge may submit issues to jury of his own will.—If a plaintiff fails to give the notice required, he cannot demand a submission of issues to a jury in an equity cause as a right, but the judge may send out issues to enlighten his conscience. Where such issue is framed by one judge but not tried by him, nor ordered continued and tried by a succeeding judge after insistence of defendant after objection to change in issues proposed by plaintiff, such plaintiff, having made no objection to issue as first framed, is precluded from making any objection to the trial of the issue as framed. *Goodwin v. Wiles*, 76 S. C. 507, 57 S. E. 547 (1907).

Or he may refer issues to referee.—A complaint asking that a cloud upon the title to land be removed and the paper purporting to be a deed be canceled presents a cause for equity cognizance. Hence, where no application was made under this rule to

refer any issues to a jury, the court could, in its discretion, refer the issues for trial to a referee, the action not being for the recovery of money or of specific real or personal property. *Shute v. Shute*, 79 S. C. 420, 60 S. E. 961 (1908).

Reference preparatory to hearing does not interfere with rule.—A reference "preparatory to the hearing of the case on the merits," made on a foreclosure to ascertain the amount due, does not interfere with the defendant's rights as to another mode of trial of the issues of fact in pursuance of this rule. *Bank of Hampton v. Fennell*, 55 S. C. 379, 33 S. E. 485 (1899).

Section is inapplicable to actions on mechanic's liens.—Since a mechanic's lien is only enforceable by the prescribed statutory proceeding, this rule is inapplicable. *Metz v. Critcher*, 83 S. C. 396, 65 S. E. 394 (1909).

And to certain issues in mortgage foreclosure.—An action to foreclose a mortgage covering real and personal property is an equity case, and defendants are not entitled to a jury trial on the issue of plaintiff's ownership of bonds where the facts as to such ownership could be determined by the court without a jury trial. *Tollner v. American Pub. Co.*, 125 S. C. 317, 118 S. E. 619 (1923).

For additional related cases, see *McCarter v. Armstrong*, 32 S. C. 203, 10 S. E. 953 (1890); *Lucken v. Wichman*, 5 S. C. 411 (1874); *DeLoach v. Sarratt*, 55 S. C. 254, 33 S. E. 2, 35 S. E. 441 (1899); *McLaurin v. Hodges*, 43 S. C. 187, 20 S. E. 991 (1895); *Muldrow v. Jeffords*, 144 S. C. 509, 142 S. E. 602 (1928).

Applied in *Ex parte Apeler*, 35 S. C. 417, 14 S. E. 931 (1892); *Mullaly v. Smyth*, 96 S. C. 14, 79 S. E. 634 (1913); *Osteen v. Bultman*, 90 S. C. 452, 73 S. E. 874 (1912); *Forrest v. City Council*, 65 S. C. 500, 43 S. E. 952 (1903); *Montague v. Best*, 65 S. C. 455, 43 S. E. 963 (1903).

Cited in *Columbia Theological Seminary v. Arnette*, 168 S. C. 272, 167 S. E. 465 (1932).

Calling plaintiff submitting to nonsuit.—It shall not be necessary to call the plaintiff when the jury return to the bar to deliver their verdict, and the

plaintiff shall have no right to submit to a nonsuit after the jury have gone from the bar to consider their verdict.

Applied in *Aiken Petroleum Co. v. National Petroleum Underwriters*, 207 S. C. 236, 36 S. E. (2d) 380 (1945).

30

Submitting to nonsuit or dismissal before a master or referee—form of master's or referee's report.—On a hearing before a Master or Referee, the plaintiff may submit to a nonsuit or dismissal of his complaint, or may be nonsuited, or his complaint be dismissed, in like manner as upon a trial, at any time before the cause has been finally submitted to the Master or Referee for his decision; in which case the Master or Referee shall report according to the fact, and judgment made thereupon be perfected by the defendant.

Proceedings on references other than of the issues.—Upon a trial by a Master or Referee, he shall in his decision or report, state the facts found by him and his conclusions of law separately, a copy of which shall be served with notice of the judgment; and the time within which exceptions may be taken to the report shall be computed from the time of such service.

In references other than for the trial of the issues in an action, upon the coming in of the report of the Master or Referee the same shall be filed, and a note of the day of filing shall be entered by the Clerk in the proper book, under the title of the cause or proceedings; and the said report shall become absolute and stand as in all things confirmed unless exceptions thereto are filed and served within ten days after service of notice of the filing of the same. If exceptions are filed and served within such time, the same may be brought to a hearing on the notice of any party interested therein.

For related cases, see *Verner v. Perry*, 6 S. C. 29 (1875); *Moore v. Bollmann*, 45 S. C. 262, 22 S. E. 888 (1895); *Cureton Johnson*, 7 S. C. 303 (1876).
v. Mills, 13 S. C. 409 (1880); *Bollmann v.*

31

Examination of witnesses—how conducted—time for summing up or hearing.—On the trial of issues of fact, one counsel only, on each side, shall examine or cross examine a witness and not more than one counsel on each side shall sum up or be heard in any cause; and during such examination the examining counsel shall stand; and the testimony, if taken down in writing, shall be written by some other persons than the examining counsel, but the Judge who holds the Court may otherwise order, or may dispense with this requirement: *Provided*, That the time of two hours, allowed by Statute, may be distributed among as many counsel on each side as they may desire.

Applied in *Barnett v. Gottlieb*, 98 S. C. 180, 82 S. E. 406 (1914).

32

Papers to be furnished and by whom.—The papers to be furnished on motions shall be a copy of the pleadings, when the question arises on the pleadings or any part thereof, or of such parts only as relate to the question raised by the demurrer; a copy of the special verdict, return or other papers on which the question arises.

Penalty for failure.—The party whose duty it is to furnish the papers shall serve a copy on the opposite party (except upon trial of issues of law) at least four days before the time the matter may be noticed for argument. If the party whose duty it is to furnish the papers shall neglect to do so, the opposite party shall be entitled to move, on affidavit and notice of motion, that the cause be stricken from the Calendar (whichever party may have noticed it for argument), and that judgment may be rendered in his favor: *Provided, however,* That in mortgage and partition cases where the plaintiff's rights are not contested no copies of pleadings need be furnished the Court.

Who to furnish papers.—The papers shall be furnished by the plaintiff when the question arises on special verdict, and by the party demurring in cases of demurrer, and in all other cases by the party making the motion.

33

Order to stay with view to change venue—revoking stay—notice of revocation.—No order to stay proceedings for the purpose of moving to change the place of trial shall be granted unless it shall appear from the papers that the party moving has used due diligence in preparing the motion for the earliest practicable day after the issue joined. Such order shall not stay the plaintiff from taking any steps except subpoenaing witnesses for the trial without a special clause to that effect.

34

Commissions—how executed and how opened.—Commissions when executed shall be sealed up by the Commissioners who shall have executed the same, and directed to the Clerk of the Court from which they were issued. Upon the envelope shall appear the names of the Commissioners, written by themselves across the place where the same is sealed, the title of the cause, and when sent by mail, the proper postmark. Commissions shall not be opened but upon motion in open Court before a Master or Referee or Referees, hearing the cause, or by consent of the parties, in writing, or by the Clerk or Master, or Referee, upon request of any of the parties, and four days' notice to all parties of the time and place of such opening.

Whenever an original document or paper is enclosed in a commission, and such commission is opened in the manner hereinbefore provided, it shall be lawful, and the Clerk is hereby authorized to take such original document or paper out of such Commission and deliver the same to the party entitled thereto, to be used in taking other and further testimony in refer-

ence to such document or paper, the same having first been marked for identification.

35

Presence of accused on trial.—No person shall be tried on an indictment unless personally present, except for misdemeanors; and upon the trial of any person charged with an offense for which the law requires that he should be arraigned the prisoner shall be placed in the dock.

And after arraignment the prisoner shall remain in custody of the Sheriff until discharged therefrom by due process of law, and that the condition of all recognizances in cases of felony be so drawn as to require the accused to appear and plead to such indictment as may be preferred against him.

Applied in *State v. Rabens*, 79 S. C. 542, 60 S. E. 442, 1110 (1908).

36

Surveys—how made when ordered by the court—notice of.—Surveys of land in any quantity of two hundred acres or less shall be laid down by a scale of ten chains to the inch; all over that quantity, by a scale of twenty chains to the inch.

No survey made under an order of the Court shall be received in evidence unless it appear that at least ten days' notice of the time and place of commencing such survey has been given to the parties.

Particulars required.—Every surveyor shall represent in his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership. He shall also represent a fence, buildings, or the like, by a mark in due proportion in size, according to the scale of the plat. He shall, by some small but distinct letter or figure, distinguish every corner, station, blazed tree, or other point which is likely to be the subject of dispute. He shall take care not to render the plat confused or indistinct by crowding too much upon it; but he shall rather refer the letters or figures to a table (which may contain the course and distances of lines, the marks at corners, stations and noted points, explanations and remarks), than attempt to write much on the lines, or near to points on the plat. He shall also make two drafts or duplicates of the plat, so that on the trial there may be one for the use of the Judge, and the other for the parties in Court.

Objections.—After a cause has gone to a jury, and any evidence has been heard on it, neither party shall be allowed to make any objection to the order or survey, or the manner in which it may have been obtained or the survey executed.

Copy of rule.—A copy of this Rule shall be appended to every order of survey served on a surveyor.

Survey is not required.—This rule provides for a survey in actions to recover land, but it does not require one. *Patterson v.*

Crenshaw, 32 S. C. 534, 11 S. E. 390 (1890).
Cited in *Lucius v. Du Bose*, 114 S. C. 375, 103 S. E. 759 (1920).

37

Judgment on failure to answer—when to be applied for.—When the plaintiff in the action is entitled to judgment upon failure of the defendant to answer the complaint, and the relief demanded requires application to be made to the Court, such application must be made in the Circuit Court in the county in which the action is triable.

Judgment may be had in action triable in another county.—Where judge gave default judgment in one county in action triable in another county of same judicial circuit, it was held that such judgment was effective. *McInnis v. Caulk*, 176 S. C. 399, 180 S. E. 340 (1935).

Since this rule does not supersede statutory law. — This rule, if found to be inconsistent with cited law, must give way to the statutes as interpreted by the court. *McInnis v. Caulk*, 176 S. C. 399, 180 S. E. 340 (1935).

38

Judgment after service by publication—affidavit—undertaking.—In actions for the recovery of money only, when the summons has been served by publication, under Section 436 of the Code of Procedure, and the defendant is a non-resident of the State, no judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined on oath respecting any payments that have been made to the plaintiff or to any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with the proof of publication.

Before judgment is rendered the plaintiff shall (unless the Court in its discretion dispense with the same) cause to be filed an undertaking in such amount as shall be ordered by the Court with security to be approved by the Court or the Clerk thereof, that the plaintiff will abide the order of the Court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under, or by virtue of, such judgment, in case the defendant or his representative shall apply and be admitted to defend the action and shall succeed in such defense.

39

Judgment roll—how made up.—The Clerk shall record in the Judgment Book, at length, all judgments entered in his office, with the names of all parties, plaintiff or defendant, who have appeared, or been served with a summons therein, and the names of the attorneys, with the time and place of the rendition of such judgment and the number of the roll; and when, by any judgment, any matter shall be adjudged, or act or thing commanded, other than the payment of money, space sufficient shall be left after the entry thereof for the entering of such proceedings as may be thereafter had for the enforcement or satisfaction of such judgment.

40

Recording judgments of Supreme Court—adjusting costs thereon.—When a judgment rendered by the Supreme Court shall be certified to the Circuit Court it shall be the duty of the Clerk of the Circuit Court to adjust the costs and disbursements in the Supreme Court to which any party may be entitled upon due notice, as provided in the case of the adjustment of costs in the Circuit Court; and he shall record such judgments and enter an abstract thereof in like manner as is provided in the case of judgments rendered by the Circuit Court. At the foot of such record a reference shall be made to the page at which the judgment appealed from is recorded and a like reference shall be entered at the foot of the entry of the original judgment to the page at which the judgment on appeal is recorded.

Costs for printing brief on appeal to United States Supreme Court.—Respondent sustaining judgment on appeal to United States Supreme Court was held entitled to costs

for printing her brief in United States Supreme Court and for transcript of record. *Ford v. Atlantic Coast Line R. Co.*, 170 S. C. 93, 169 S. E. 834 (1933).

41

Sales of land at auction.—When lands are directed to be sold at auction, notice of sale shall be given for the same time and in the same manner as is required by law on sales of real estate by sheriffs on execution.

42

General guardian of infant—security.—After the appointment of the general guardian of an infant he shall not be entitled to receive any money or other property to which the ward shall thereafter become entitled until the Court is satisfied, upon due inquiry, that he has given a good and sufficient bond to account therefor.

Old bond may be strengthened.—It is the duty of a probate judge to require the general guardian of a minor to strengthen his old bond or give a new one when it is brought to his attention that such guardian is about to receive funds not in contempla-

tion when the original bond was executed. In taking and approving such bonds, the judge acts in a ministerial capacity. *Williams v. Weeks*, 70 S. C. 1, 48 S. E. 619 (1904).

43

Application for discovery—how made.—Applications may be made in the manner provided by law to compel the production and discovery of books, papers and documents relating to the merits of any civil action pending in this Court or any defense in such action in the following cases:

1. By the plaintiff, to compel the discovery of books, papers or documents in the possession or under the control of the defendant which may be necessary to enable the plaintiff to frame his complaint or to answer any pleading of the defendant.

2. The plaintiff may be compelled to make the like discovery of books, papers or documents when the same shall be necessary to enable the defendant to answer any pleadings of the plaintiff.

3. Either party may be compelled to make discovery, as provided by section 26-502 of the Code.

Cross references.—As to examination of debtors, etc., of judgment debtor, see § 10-1725. As to proceedings against joint debtors, see § 10-1726.

Application for discovery of books and records.—A manager of a store under a contract whereby his remuneration depended upon the operating results, the record of which was kept by a store owner, was held entitled to discovery of the books and the

records in possession of the store owner in order to enable the manager intelligently to draw up his complaint. *Whitman v. National Manufacture & Stores Corp.*, 175 S. C. 464, 179 S. E. 478 (1935).

Applied in *Boykin v. Hermitage Cotton Mills*, 180 S. C. 364, 185 S. E. 863 (1936); *Floyd v. Victory Sav. Bank*, 182 S. C. 357, 189 S. E. 462 (1937).

44

Moving papers—what to state.—The moving papers, upon the application for such discovery, shall state the facts and circumstances on which the same is claimed, and shall be verified by affidavit stating that the books, papers and documents whereof discovery is sought are not in the possession nor under the control of the party applying therefor. The party applying shall show to the satisfaction of the Court or Judge the materiality and necessity of the discovery sought and the particular information which he requires.

Application for discovery of books and records.—See note to Cir. Ct. Rule 43.

Applied in *Boykin v. Hermitage Cotton Mills*, 180 S. C. 364, 185 S. E. 863 (1936);

Floyd v. Victory Sav. Bank, 182 S. C. 357, 189 S. E. 462 (1937); *Hyman v. Carolina Veneer & Lumber Co.*, 194 S. C. 67, 9 S. E. (2d) 27 (1940).

45

Order for discovery.—Discovery may be compelled by requiring the party to produce and deposit the matters to be discovered with the Clerk for the county in which the trial is to be had, or by requiring him to deliver sworn copies thereof to the moving party, or in such other manner as may be directed by the Court. The order therefor shall specify the mode of making the discovery and the time within which it is to be made; and when papers are required to be deposited the order shall specify the time that the deposit shall continue.

Application for discovery of books and records.—See note to Cir. Ct. Rule 43.

Applied in *Boykin v. Hermitage Cotton*

Mills, 180 S. C. 364, 185 S. E. 863 (1936); *Floyd v. Victory Sav. Bank*, 182 S. C. 357, 189 S. E. 462 (1937).

46

Order for discovery to operate as a stay of proceedings.—The order directing the discovery of books, papers, or documents shall operate as a stay of all other proceedings in the cause until such order shall have been complied with or vacated, and the party obtaining such order after the same is complied with or vacated shall have the time to prepare his complaint, answer, reply or demurrer to which he was entitled at the making of the order; but the judge in granting the order may limit its effect by declaring how far it shall operate as a stay of proceedings.

Application for discovery of books and records.—See note to Cir. Ct. Rule 43.

Applied in *Boykin v. Hermitage Cotton Mills*, 180 S. C. 364, 185 S. E. 863 (1936).

Cited in *Hydrick v. Fairey*, 132 S. C. 335, 128 S. E. 358 (1925).

47

New trial and appeal; settling cases, exceptions and special verdicts.—Whenever it shall be intended to move the Circuit Court for a new trial (except for irregularity, surprise, or on the minutes of the Judge), in an action tried by a jury, a case or exceptions, or case containing exceptions, as may be proper and the party may elect, shall be prepared by the party intending to make the motion or to renew the trial, and a copy thereof shall be served on the opposite party within ten days after trial, if by a jury, or within ten days after written notice of the filing of the decision, if the trial be by referee; and the party served may, within ten days thereafter, propose amendments thereto and serve a copy on the party proposing the case or exceptions, who may then, within four days thereafter, serve the opposite party with a notice that the case or exceptions, with the proposed amendments, will be submitted at a time and place to be specified in the notice to the Judge or Referee before whom the cause was tried for settlement. The Judge or Referee shall thereupon correct and settle the case as he shall deem consistent with the truth of the facts. The time for settling the case must be specified in the notice, and it shall not be less than four nor more than twenty days after service of such notice.

The lines of the case shall be so numbered that each copy shall correspond. Cases reserved for argument, and special verdicts, shall be settled in the same manner.

Cross reference.—As to what constitutes the return for the Supreme Court for the purpose of an appeal, see Sup. Ct. Rule 1.

Right to move for new trial is waived by appeal from judgment. *Murdock v. Court-*

enay Mfg. Co., 52 S. C. 428, 29 S. E. 856, 30 S. E. 142 (1898).

As to manner of settling case, see *McNamee & Co. v. Huckabee*, 20 S. C. 190 (1883).

48

Exceptions—what to contain—amendments—how to be marked.—Exceptions shall only contain so much of the evidence as may be necessary to present the questions of law upon which the same were taken on the trial; and it shall be the duty of the judge upon settlement to strike out all the evidence and other matters not necessarily inserted.

Whenever amendments to a case or exception are proposed, the party proposing such case or exceptions shall, before submitting the same to the judge for settlement, mark upon the several amendments his proposed allowance or disallowance thereof.

Applicability.—It seems that this rule is no longer in force. *Croswell v. Connecticut*

Indem. Ass'n, 49 S. C. 374, 27 S. E. 388 (1897).

Mode of preparing a case on appeal.—In every appeal to the Supreme Court from matter appealable, the appellant, or his attorney, shall within ten days after written notice of the filing of such matter appealable, or, if filed within term time, within ten days after the rising of the Circuit Court, give written notice to the opposite party, or his attorney, of his intention to appeal therefrom, and within thirty (30) days after such notice the appellant, or his attorney, shall prepare a case or exceptions, or a case containing exceptions (which exceptions shall have been taken and served within the time prescribed by law), and serve them on the opposite party, or his attorney, or within such further time as, upon ten (10) days' notice to the opposite party, or his attorney, the Judge who tried the cause may for good cause grant. But should the parties within the time above named, be unable to agree upon a case, then the proposed case, with the proposed amendments, and allowances and disallowances, shall be within ten days after failing to agree, referred for settlement to the Circuit Judge who heard the cause, who shall settle the same within the time and in the manner provided for settling a case in Rule 47.

The parties, if they agree on a case, or the Circuit Judge who may settle the same, must see that the case shall, as to the matter it contains, conform to the requirements of the Rules of Supreme Court in regard to the form and substance of a case for hearing before that Court.

Cross reference.—As to contents of case on appeal to the Supreme Court, see Sup. Ct. Rule 4.

Time to serve case may be extended.—The time within which the case should be served may be extended either by the circuit judge under this rule or by a justice of the Supreme Court. Under Cir. Ct. Rule 50, the motion for extension should ordinarily be made before the time has expired. See *Stribling v. Johns*, 16 S. C. 112 (1881).

Motion for extension is made to trial judge.—If motion for extension is made in the circuit court, it must be before the judge who tried the cause, and his decision is final. *Stribling v. Johns*, 16 S. C. 112 (1881).

Appeal is denied after time for applying for extension ended.—Judge cannot enlarge time for appeal after time for application for extension has elapsed. *Brock v. Brock*, 123 S. C. 361, 116 S. E. 442 (1923).

Time for serving case commences on entry of judgment.—Where notice is served of intention to appeal from judgment to be entered, the time within which the case must be served does not commence to run until judgment is entered. *American Pub. & Engraving Co. v. Gibbs & Co.*, 59 S. C. 215, 37 S. E. 753 (1901).

Motion to settle is made before circuit judge.—The motion to settle the case must

be made before the circuit judge, the circuit court having jurisdiction until the return has been filed in the Supreme Court and the papers in the cause are records of that court. *Sullivan v. Thomas*, 3 S. C. 531 (1872); *Gibson v. Gibson*, 7 S. C. 356 (1876).

Conformity by Supreme Court to circuit court settlement order.—The Supreme Court has power to require conformity to the order of the circuit court settling a case for appeal to the Supreme Court. It may remand a case to the circuit court for further settlement. But the Supreme Court has not the power itself to say what the case shall contain. *Baker v. Irvine*, 62 S. C. 293, 40 S. E. 672 (1902).

Settlement provisions do not apply to "exceptions".—The provisions of this rule permitting parties who fail to agree on a "case" to refer it to the circuit judge for settlement do not include "exceptions." A failure to file the exceptions in the circuit court so that they can, within the prescribed time, be certified to the Supreme Court as part of the return is not excused by the fact that they were mistakenly submitted with the "case" for settlement by the judge and are beyond the control of appellant. *Croswell v. Connecticut Indem. Ass'n*, 49 S. C. 374, 27 S. E. 388 (1897).

Such failure, following due notice of intention to appeal, is within the statute pro-

viding that the Supreme Court may, in its discretion and on such terms as may be just, relieve a party from the consequences of any omission in perfecting an appeal arising from mistake or inadvertence. *Crosswell v. Connecticut Indem. Ass'n*, 49 S. C. 374, 27 S. E. 388 (1897).

As to procedure before circuit judge on motion to settle case, see *Chalk v. Patter-*

son, 4 S. C. 98 (1873); *Crosswell v. Connecticut Indem. Ass'n*, 49 S. C. 374, 27 S. E. 388 (1897).

As to time for giving notice of appeal, see *Molair v. Port Royal & A. Ry. Co.* 31 S. C. 510, 10 S. E. 243 (1889).

Applied in *Rylee v. Maret*, 121 S. C. 366, 113 S. E. 483 (1922).

50

Case—how waived and what deemed settled.—If the party shall omit to make a case, or exceptions, or statement of facts, within the time above limited, he shall be deemed to have waived his right thereto, and when the same is made, and the parties shall omit, within the several times above limited, the one party who proposed amendments, and the other to notify an appearance before the judge, master or referee, they shall respectively be deemed, the former to have agreed to the case as proposed, and the latter to have agreed to the amendments as proposed.

51

If in an action to foreclose mortgage, defendant fail to answer.—If in an action to foreclose a mortgage the defendant fails to answer within the time allowed for that purpose, or the right of the plaintiff as stated in the complaint is admitted by the answer, the plaintiff may have an order referring it to the Master, Clerk, or some suitable person as Referee, to compute the amount due to the plaintiff, and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels, if the whole amount secured by the mortgage has not become due. If the defendant is an infant, and has put in a general answer by his guardian or if any of the defendants are absentees, the order of reference shall direct the person to whom it is referred to take proof of the facts and circumstances stated in the complaint, and to examine the plaintiff or his agent on oath, as to any payments which have been made, and to compute the amount due on the mortgage, preparatory to the application for judgment of foreclosure and sale.

The plaintiff in such case, when he moves for judgment, must show by affidavit or otherwise, whether any of the defendants, who have not appeared are absentees; and if so, he must produce the report as to the proof of the facts and circumstances stated in the complaint, and of the examination of the plaintiff, or his agent, on oath, as to any payments which have been made. And in all foreclosure cases the plaintiff, when he moves for judgment, must show by affidavit or by the certificate of the Clerk for the county in which the mortgaged premises are situated, that a notice of pendency of the action containing the names of the parties thereto, the object of the action, and a description of the property in that county affected thereby, the date of the mortgage, and the time and place of recording the same, has been filed at least twenty days before such application for judgment, and at or after the time of filing the complaint, as required by section 10-501 of the Code.

As to proof of payments in case of absentees, see *Clemson Agri. College v. Pickens*, 42 S. C. 511, 20 S. E. 401 (1894). Applied in *Johnson v. Masters*, 49 S. C. 525, 27 S. E. 474 (1897).

52

Judgment for sale of mortgaged premises—what to contain.—Unless otherwise specially ordered by the Court, the judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to raise the amount due to the plaintiff for principal, interest and cost, and which may be sold separately without material interest to the parties interested, be sold by or under the direction of the Sheriff of the county, or Clerk or Master, and that the plaintiff or any other party may become a purchaser on such a sale; that the officer making the sale execute a deed to the purchaser; that out of the proceeds of the sale he pay to the plaintiff or his attorney the amount of his debt, interest and cost, or so much as the purchase money will pay of the same, and that he take receipt of the plaintiff or his attorney for the amount so paid and file the same with his report of sale; and that the purchaser at such sale be let into possession of the premises on production of the deed.

All surplus moneys arising from the sale of mortgaged premises under any judgment shall be paid or deposited by the Sheriff or other officer making the sale, within five days after the same shall be received in the manner provided by law for the securing of moneys in the custody of this Court.

As to requiring payment of cash at time of sale, see *Tyer v. Charleston Rice Milling Co.* 32 S. C. 598, 10 S. E. 1067 (1890).

53

Claims for surplus money.—On filing the report of the sale, any party to the action, or any person who had a lien on the mortgaged premises at the time of the sale, upon filing with the Clerk where the report of sale is filed, a notice stating that he is entitled to such surplus money or some part thereof, and the nature and extent of his claim, may have an order or reference to ascertain and report the amount due to him or to any other person, which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon, to the end that on the coming and confirmation of the report on such reference such further order may be made for the distribution of such surplus moneys as may be just. Every party who appeared in the cause, or who shall have filed such notice with the Clerk previous to the entry of the order of reference, shall be entitled to service of a notice of the application for the order of reference and to attend on such reference and to the usual notices of subsequent proceeding relative to such surplus. But if such claimant has not appeared or made his claims by an attorney of this Court, the notice may be served by putting the same into the postoffice directed to the claimant at his place of residence, as stated in the notice of his claim.

As to what is not a report of sale, see 873 (1902). See also, Prudential Invest. Co. v. Connor, 120 S. C. 42, 112 S. E. 539 (1921).

54

Requisites for obtaining order for partition.—No partition of real estate of a deceased person shall be had unless the legal representative or representatives of such deceased person be made parties to the action and it be made to appear to the court that the debts of such deceased person are fully paid, or that the personal estate in the hands of personal representative or representatives is sufficient for the payment of the debts of such deceased person, or unless in the decree due provision is made for the payment of the debts.

Where several tracts or parcels of land lying in this State are owned by the same persons in common, no separate action for partition of a part thereof only shall be brought without the consent of all the parties interested therein; or if brought without such consent the share of the plaintiff may be charged with the whole cost of the proceeding. And when infants are interested, it shall be stated whether the parties own any other land in common.

Rule is not jurisdictional.—This rule is only a rule of practice and is not jurisdictional in its nature. *De Hay v. Smith*, 118 S. C. 78, 109 S. E. 800 (1921).

Necessity for payment of decedent's debts.—In any decree for partition it is necessary, under the terms of this rule, to make "due provision" for the payment of the

debts of the deceased. *Smith v. Pearson*, 210 S. C. 524, 43 S. E. (2d) 479 (1947).

For additional related case, see *Gladden v. Chapman*, 106 S. C. 486, 91 S. E. 796 (1917).

Applied in *Ex parte Worley*, 49 S. C. 41, 26 S. E. 949 (1897); *Horton v. Horton*, 214 S. C. 141, 51 S. E. (2d) 425 (1949).

55

Reference as to title where no defense is interposed.—Where the rights and interests of the several parties, as stated in the complaints, are not denied or controverted, if any of the defendants are infants or absentees, or unknown, the plaintiff, on an affidavit of the fact, and notice to such of the parties as have appeared, may apply for an order of reference, to take proof of the plaintiff's title and interest in the premises and of the several matters set forth, and to ascertain and report the rights and interests of the several parties and an abstract of the conveyances by which the same are held.

56

How questions brought before court.—All questions for argument and all motions shall be brought before the Court on a notice or by an order to show cause; and if the opposite party shall not appear to oppose, the party making the motion of obtaining the order shall be entitled to the rule or judgment moved for on proof of due service of the notice, or order, and papers required to be served by him, unless the Court shall otherwise direct.

Order to show cause—when granted.—Such order to show cause shall only be granted when a special reason for a notice, less than four days, appears on the papers presented; and the party shall in his affidavit, state the present conditions of the action, and whether at issue.

And when the motion is for irregularity, the notice or order shall specify the irregularity complained of.

Restraining order—when granted.—No restraining order pending return to a rule to show cause shall be granted unless it shall be made to appear by affidavit to the satisfaction of the Judge that irreparable injury is likely to result to the moving party in the meantime.

Intent of rule.—This rule does not have the effect, nor was it intended to limit the jurisdiction of the court. It was intended to regulate practice, is clear, explicit, and positive, and should be enforced when a party affected thereby invokes the protection of the rule in proper time and way. *Coker & Co. v. Barfield*, 73 S. C. 179, 53 S. E. 174 (1906).

Rule may be waived.—Since this rule is a matter of practice, it may be waived if it is not invoked in proper time. *Coker & Co. v. Barfield*, 73 S. C. 179, 53 S. E. 174 (1906).

Notice is necessary to validity of an order. *State v. Parker*, 7 S. C. 235 (1876).

Specific notice is required on motion for irregularity. *Guckenheimer v. Libbey*, 42 S. C. 162, 19 S. E. 999 (1894); *Addison v. Sujette*, 50 S. C. 192, 27 S. E. 631 (1897); *Lipscomb v. Rice*, 47 S. C. 14, 24 S. E. 925

(1896); *Smith & Melton v. Walker*, 6 S. C. 169 (1875); *Green v. Charlotte, etc., R. Co.*, 6 S. C. 342 (1875).

Motion papers must cover all questions.—The judge cannot decide on motion any question not covered by the motion papers. *Ford v. Calhoun*, 53 S. C. 106, 30 S. E. 830 (1898).

Prior proceedings referred to in notice of motion may be referred to in consideration of motion. *Ex parte Wells*, 43 S. C. 477, 21 S. E. 334 (1895).

As to notice referring to other papers, see *Standard Sewing Mach. Co. v. Henry*, 43 S. C. 17, 20 S. E. 790 (1895).

Applied in *Lester v. Fox Film Corp.*, 114 S. C. 414, 103 S. E. 775 (1920); *Palmetto Guano Corp. v. Green*, 138 S. C. 106, 136 S. E. 132 (1926).

57

Points on motions—discussions on facts.—In all calendar motions, each party shall briefly state upon his points the leading facts which he deems established, with a reference to their folios where the evidence of such facts may be found; and the Court will not bear an extended discussion on a mere question of fact.

58

Argument; opening and reply.—On all rules to show cause where a party failing to answer would be in contempt, the party called on shall begin and end his cause; and on all motions of special matters, either springing out of the cause or otherwise, the actor or party submitting the same to the Court shall in like manner begin and close; and so shall the defendant, where he admits the plaintiff's cause by the pleadings, and takes upon himself the burden of proof, have the like privilege.

The party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposite party.

Opening reply is settled by pleadings.—Statement of defendant's counsel that he assumed the burden of proving the real issue cannot alter the rule as to opening the reply in evidence and argument, since such opening reply must be settled by the status fixed by the pleadings. *Kennington v. Catoe*, 68 S. C. 470, 47 S. E. 719 (1904);

Barnett v. Gottlieb, 98 S. C. 180, 82 S. E. 406 (1914); *Floyd v. New York Life Ins. Co.*, 110 S. C. 384, 96 S. E. 912 (1918).

The right to open and close is waived where not claimed. *Pinson v. Bowles*, 116 S. C. 47, 106 S. E. 775 (1921).

Solicitor must make opening speech to jury.—Court's refusal to require solicitor

to make opening speech to jury before arguments of defendant's attorneys is reversible error. *State v. Atterberry*, 129 S. C. 464, 124 S. E. 648 (1924).

Conditions under which defendant may open and reply.—The right of defendant to open and reply depends upon the state of the pleadings. This rule provides that it shall exist only when the defendant admits the plaintiff's case by the pleadings and takes upon himself the burden of proof. Such rule has been construed in numerous cases to mean that the defendant is entitled to open and reply only when under the pleadings alone, without evidence on either side, a verdict should be directed for plaintiff. *Strode v. Barnes*, 124 S. C. 403, 117 S. E. 420 (1923); *Martin v. Suber*, 39 S. C. 525, 18 S. E. 125 (1893); *Thompson v. Security Trust & Life Ins. Co.*, 63 S. C. 290, 41 S. E. 464 (1902); *Early v. Early*, 75 S. C. 15, 54 S. E. 827 (1906); *Gaffney Live Stock Co. v. Bonner*, 92 S. C. 122, 75 S. E. 369 (1912); *Sternheimer v. Order of United Commercial Travelers*, 107 S. C. 291, 93 S. E. 8 (1917); *Yancey v. Southern Wholesale Lumber Co.*, 129 S. C. 48, 123 S. E. 767 (1924).

A defendant is not entitled to open and reply unless he admits in his answer the plaintiff's cause of action and sets up an affirmative defense. *Thompson v. Security Trust & Loan Ins. Co.*, 63 S. C. 290, 41 S. E. 464 (1902); *Addison v. Duncan*, 35 S. C. 165, 14 S. E. 305 (1892); *Beckham v. Southern Ry. Co.*, 50 S. C. 25, 27 S. E. 611 (1897).

Effect of defendant's assumption of burden of proof.—Where the defendant, by his pleadings, admits the plaintiff's cause of action as stated in the complaint and relies solely upon an affirmative defense based upon the facts stated in his answer, he is

then entitled to open and reply. The plaintiff in such a case would have nothing whatever to prove, and the defendant, being compelled to assume the burden of proving the facts upon which he rests his affirmative defense, would thus become the actor. *Sirgany v. Equitable Life Assur. Soc.*, 173 S. C. 120, 175 S. E. 209 (1934).

Rejection of defendant's request to open and close.—In actions on life policies, in which defendant set up affirmative defense of fraud and rescission because of false answers in application, defendant's request to open and close arguments to jury was held properly refused where defendant waited until plaintiff had rested, and until all of defendant's witnesses had testified and its motion for a directed verdict had been refused. *Sirgany v. Equitable Life Assur. Soc.*, 173 S. C. 120, 175 S. E. 209 (1934).

Erroneous denial of right to open and close may be cured.—Where, after erroneously denying right to open and close, the court offered defendants the right to reply to plaintiff's argument, such error was cured. *Pinson v. Bowles*, 116 S. C. 47, 106 S. E. 775 (1921).

For additional related cases, see *Boyce v. Lake*, 17 S. C. 481 (1882); *Mitchell v. Fowler*, 21 S. C. 298 (1884); *State v. Huckie*, 22 S. C. 298 (1885); *Addison v. Duncan*, 35 S. C. 165, 14 S. E. 305 (1892); *Beckham v. Southern Ry. Co.*, 50 S. C. 25, 27 S. E. 611 (1897); *Columbia v. Tindal*, 43 S. C. 547, 22 S. E. 341 (1895); *Brown v. Kirkpatrick*, 5 S. C. 267 (1874); *Davis v. Winsmith*, 5 S. C. 332 (1874); *Bennett v. Sandifer*, 15 S. C. 418 (1881).

Applied in *Allen v. Cooley*, 53 S. C. 414, 31 S. E. 634 (1898); *Crumel v. Metropolitan Life Ins. Co.*, 179 S. C. 338, 184 S. E. 169 (1936).

59

Costs of former suits.—Where a party has suffered a nonsuit, or discontinuance, or has otherwise let fall his action, all proceedings in any new action, for the same cause, shall be suspended until all costs and disbursements as may be taxed by the Clerk of such former actions have been paid.

This rule must be complied with before another action can be prosecuted to judgment. *Duncan v. Duncan*, 93 S. C. 487, 76 S. E. 1099 (1913).

Rule applies to nonresidents.—Order requiring nonresident to pay costs in first suit as condition to maintaining second suit on same cause of action was held proper. *McEachern v. Wilson*, 165 S. C. 485, 164 S. E. 133 (1932).

And to case dismissed on demurrer.—Case dismissed on demurrer because complaint does not state a cause of action falls under this rule. *Hadwin v. Southern Ry.*, 67 S. C. 463, 45 S. E. 1019 (1903).

But not to State proceeding to estreat recognizance.—A special proceeding by the State to estreat a recognizance does not fall within this rule so as to bar the State for its failure to pay costs of action by the

State against the surety on the recognizance on the civil side of the court. *State v. Cornell*, 70 S. C. 409, 50 S. E. 22 (1905).

Nor to discontinuance before verdict.—In case of a discontinuance before verdict, such discontinuance proceedings cannot be set up as bar in new suit. *Ball v. Trenholm*, 45 F. 588 (1891).

For additional related cases, see *Blakely & Copeland v. Frazier*, 11 S. C. 122 (1878); *Daniels v. Moses*, 12 S. C. 130 (1879); *Tibbetts v. Langley Mfg. Co.*, 12 S. C. 465 (1879); *Lewis v. Hinson*, 57 S. C. 193, 35 S. E. 519 (1900).

60

Subsequent applications for order after refusal.—If any application for an order be made to any Judge and such order be refused in whole or in part or be granted conditionally or on terms, no subsequent application upon the same state of facts shall be made to any other Judge, and if upon such subsequent application any order be made, it shall be revoked; and in the affidavit for such order the party or his attorney shall state whether any previous application for such order has been made.

Compulsory order of reference not granted.—In an action for damages against a corporation which contended that the action was barred because process was served more than two years after the corporation had been legally dissolved, the circuit judge was held without power to grant a compulsory order of reference to determine validity of the service of process prior to the ex-

piration of a two-year period, where such order had been refused by another circuit judge, since the order vitally affected the merits of the case and was not a ministerial order which could be altered by another judge. *La Count v. General Asbestos & Rubber Co.*, 175 S. C. 110, 178 S. E. 500 (1935).

61

Affidavit in mitigation—how submitted.—In the Court of General Sessions, the defendant, after verdict against him, shall not be permitted to submit any affidavit to the Court which goes to deny matters of facts, but he may submit affidavits as to matters in extenuation or mitigation; *Provided*, They are filed so as to allow the attorney general or solicitor a reasonable time to answer them.

For related cases, see *Josey v. Reynolds*, 152 S. C. 339, 150 S. E. 67 (1929); *Georgian Co. v. Britton*, 141 S. C. 136, 139 S. E. 217 (1927).

62

Time for complying with orders.—In all cases where a motion shall be granted on payment of costs or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it shall be to comply therewith shall have twenty days for that purpose unless otherwise directed in the order, but where costs to be adjusted or to be paid the party shall have fifteen days to comply with the order after the costs shall have been adjusted by the Clerk on notice unless otherwise ordered.

Rule does not apply to order lacking related contingency.—Where the court ordered an amended complaint to be filed, without stating a time limit for its filing

and without attaching a contingency dependent upon such filing, the filing of such complaint was held not to be performance of a condition in the sense contemplated by

this rule. Therefore, it was not necessary to file within twenty days. *White v. Harby*, 176 S. C. 36, 179 S. E. 671 (1935).

Applied in *Brown v. Easterling*, 59 S. C. 472, 38 S. E. 118 (1901); *Meinhard v. Youngblood*, 37 S. C. 223, 15 S. E. 947

(1892); *Brown v. Brown*, 27 S. C. 153, 3 S. E. 69 (1887); *Nettles v. MacMillan Petroleum Corp.*, 208 S. C. 81, 37 S. E. (2d) 134 (1946).

Cited in *Jordan v. State Highway Dept.*, 188 S. C. 83, 198 S. E. 174 (1938).

63

Orders on petitions.—Orders granted on petitions or relating thereto shall refer to such petitions by the name and description of the petitioners and the date of the petition if the same be dated, without reciting or setting forth the tenor or substance thereof unnecessarily. Any order or judgment directing the payment of money, or affecting the title to property, if founded on petition, where no complaint is filed, may, at the request of any party interested, be enrolled and docketed as other judgments.

64

Order to stay judgment—how obtained.—No order to stay a sale under a judgment in partition, or for the foreclosure of a mortgage, shall be granted or made by a Judge out of Court except upon notice of at least four days to the plaintiff or his attorney.

Undertaking to be required.—No order to stay a sale under execution shall be granted without requiring a written undertaking, with sureties, from the moving party to the effect that he will pay to the adverse party such damages not exceeding an amount to be fixed by the order and specified in the undertaking, as he may sustain by reason of the injunction, if the court shall finally decide that he was not entitled thereto. Such damages may be ascertained by a reference or otherwise as the court shall direct.

Stay of sale until homestead is set off.—Where circuit judge ordered a stay of a sale of land until homestead could be set off, it was held that this rule did not apply to such proceeding. *Bonebrake v. Morrow*, 183 S. C. 170, 190 S. E. 506 (1937).

For additional related case, see *Rice v. Mahaffey*, 9 S. C. 281 (1878).

Cited in *First Carolinas Joint Stock Land Bank v. Knotts*, 191 S. C. 384, 1 S. E. (2d) 797 (1939).

65

Sureties to justify.—Whenever a Justice or other officer approves the security to be given in any case or reports upon its sufficiency it shall be his duty to require personal sureties to justify. And all bonds and undertakings shall be duly proved by a subscribing witness, or acknowledged in like manner as deeds of real estate before the same shall be received or filed.

Rule is inconsistent with statutes.—This rule, with regard to having a subscribing witness to an undertaking in attachment, is inconsistent with the statutes. *Grollman v. Lipsitz*, 43 S. C. 329, 21 S. E. 272 (1895).

And it does not apply to special statutory

proceedings. *Sharp v. Palmer*, 31 S. C. 444, 10 S. E. 98 (1889).

For additional related cases, see *Continental Invest. Co. v. Matthews*, 121 S. C. 213, 114 S. E. 325 (1922); *Sullivan v. Williams*, 43 S. C. 489, 21 S. E. 642 (1895).

66

Where sureties shall justify.—Wherever sureties are required to justify they shall justify within the county where the defendant shall have been arrested, or where the sureties reside.

67

Where paper to be filed.—Paper shall be filed in the county specified in the complaint as the place of trial, or in the county to which the place of trial has been changed. And in case the place of trial is changed for the reason that the proper county is not specified, papers on file at the time of the order making such change shall be transferred to the county specified in such order; and all other papers in the cause shall be filed in the county so specified.

68

What papers to be filed and when.—It shall be the duty of the plaintiff's attorney forthwith to file with the Clerk for the proper county all undertakings given upon procuring an order of arrest, an injunction order or an attachment, with the approval of the Judge or officer taking the same endorsed thereon; and in case such undertaking shall not be filed within ten days after the order for arrest, or injunction or attachment has been granted, the defendant shall be at liberty to move the Court to vacate the proceedings for irregularity, with costs, as if no undertaking had been given. It shall also be the duty of the attorney to file, within the same time and under the like penalty, the affidavits upon which an injunction or attachment has been granted, and also the affidavit upon which an order for the service of a summons by publication or an order for a substituted service of a summons has been granted, together with the order for such service.

Applied in Blair v. Morgan, 59 S. C. 52, 37 S. E. 45 (1900); Alexander v. Jamison, 56 S. C. 409, 34 S. E. 695 (1900); Doty v. Boyd, 46 S. C. 39, 24 S. E. 59 (1896); Meinhard v. Youngblood, 37 S. C. 223, 15 S. E. 947 (1892); Ketchin v. Landecker, 32 S. C. 155, 10 S. E. 936 (1890); Townsend v. Sparks, 50 S. C. 380, 27 S. E. 801 (1897).

69

Powers of receiver of debtor's estate.—Every receiver of the property and effects of the debtor shall, unless restricted by the special order of the Court, have general power and authority to sue for and collect the debts, demands and rents belonging to such debtor, and to compromise and settle such as are unsafe and of a doubtful character. He may also sue in the name of the debtor where it is necessary or proper for him to do so.

Applied in Dilling, Baker & Co. v. Foster, 21 S. C. 334 (1884).

Cited in Hannon v. Mechanics Bldg. & Loan Ass'n, 177 S. C. 153, 180 S. E. 873 (1935).

70

Action for malicious prosecution—how commenced.—No action for malicious prosecution based upon an indictment tried by the Court of General

Sessions shall be commenced unless a copy of the indictment has been first obtained by order of the Judge before whom the case was tried.

71

Damages on breach of bond—how recovered.—After a judgment has been recovered on an official bond it shall stand as a security for any former or subsequent breach of it, and any one who may conceive himself aggrieved by the misconduct of the officer shall have a right to come in and suggest the breach of the bond of which he complains and pray execution of his damages; and upon serving a twenty-day rule upon such officer and his sureties, or such of them as judgment has been rendered against in the first action, requiring them to plead to the suggestion shall, in default of such plea, or upon issue joined, have his damages assessed by the verdict of a jury and have execution for the penalty to enforce the payment of the damages assessed.

72

Motion for arrest of judgment—when made.—If a motion in arrest of judgment or for a new trial in a criminal case be intended to be made, the party shall give notice thereof and of his grounds within two days after verdict.

No motion in arrest of judgment shall be heard after a motion for a new trial, but the motion in arrest of judgment and for a new trial may, in the first instance, be made simultaneously.

73

All former rules repealed.—All Rules heretofore adopted for the government of the practice of the Circuit Courts of this State shall be, and they are hereby, repealed. In cases where no provision is made by Statute or by these Rules, the proceedings shall be according to the practice as it has heretofore existed in the Courts of Law and Equity of this State in cases not provided for by Statute or the written Rules of the Court.

Quoted in *Bratton v. Massey*, 18 S. C. 555 (1883).

74

Removal of causes to Federal courts.—In any case where a petition and bond for the removal of any cause pending in any Court of this State to any Court of the United States shall have been filed, no order accepting the said petition and bond, or directing the cause to be removed, shall be made except after due notice of the application therefor to the other parties to the action, as in the case of interlocutory applications requiring notice.

As to practice on removal to U. S. courts, & *A. R. Co.*, 45 S. C. 470, 23 S. E. 383 (1895).
see *Sparkman v. Supreme Council*, 57 S. C. 16, 35 S. E. 391 (1900); *State v. Port Royal*

75

Time for filing pleadings and papers.—Whenever any pleading or other paper in an action is not filed within the time required by section 10-470 of the Code, any party to the action may apply after due notice to the Court or a Judge thereof at Chambers, for an order requiring the party or attorney having served such pleadings or in possession of such paper to file the same (or a copy, if the original pleading or paper be lost or destroyed) within a time limited, and on failure so to do, such party or attorney may be proceeded against as for contempt.

76

Objections for want of evidence—remedies.—The point that there is no evidence to support an alleged cause of action shall be first made either by a motion for nonsuit or a motion to direct the verdict; and the point that there is no evidence to support a defense shall be first made by motion to direct a verdict.

- I. General Consideration.
- II. Application of Section.

I. GENERAL CONSIDERATION.

This rule has no application to motions for new trials, being intended solely to regulate appeals from orders refusing motions on ground stated therein. *State v. Smith*, 139 S. C. 315, 137 S. E. 739 (1927).

The court may waive failure to comply with this rule. *State v. Ray*, 147 S. C. 329, 145 S. E. 192 (1928).

Especially where defendant's liberty is involved.—*State v. Hayes*, 138 S. C. 155, 135 S. E. 799 (1926).

The Supreme Court may waive accused's failure to file motion timely for directed verdict, which failure ordinarily precludes consideration of refusal of new trial for insufficiency of evidence to support verdict, where the accused's liberty is involved. *State v. O'Shields*, 163 S. C. 408, 161 S. E. 692 (1931).

Failure to comply with rule waived where conviction and sentence involve liberty of appellant. *State v. Lyles*, 211 S. C. 334, 45 S. E. (2d) 181 (1947).

Applied in *State v. Gregory*, 136 S. C. 31, 134 S. E. 209 (1926); *State v. Jackson*, 122 S. C. 493, 115 S. E. 750 (1923); *Bank of Pendleton v. Martin*, 118 S. C. 74, 110 S. E. 76 (1921); *Sanders v. Charleston & W. C. Ry.*, 93 S. C. 543, 77 S. E. 289 (1913); *Ackerman v. Atlantic Coast Line R. Co.*, 83 S. C. 276, 65 S. E. 268 (1909); *Sawyer v. Marion County Lumber Co.*, 83 S. C. 271, 65 S. E. 225 (1909); *Hogg v. Mutual Life Ins. Co.*, 104 S. C. 484, 88 S. E. 102 (1916); *Kennedy v. Kennedy*, 86 S. C. 483, 68 S. E.

664 (1910); *Shockley v. Cox Circus Co.*, 204 S. C. 353, 29 S. E. (2d) 491 (1944).

II. APPLICATION OF SECTION.

Questions may not first be made in motion for new trial.—Where questions are raised for the first time in a motion for new trial, they cannot be considered by the Supreme Court, for this rule requires that they shall first be raised by motion for nonsuit or directed verdict. *Cooper v. Armour & Co.*, 178 S. C. 117, 182 S. E. 298 (1935).

Motion for directed verdict is prerequisite to motion for new trial because evidence does not support verdict. *Wilson v. Southern Ry. Co.*, 123 S. C. 399, 115 S. E. 764 (1923); *Wieters & Sons v. Davis*, 181 S. C. 522, 188 S. E. 241 (1936).

Failure to make motion for directed verdict precludes Supreme Court from reviewing exceptions to sufficiency of evidence. *State v. Bowman*, 137 S. C. 364, 135 S. E. 360 (1926); *Builders' Lumber & Supply Co. v. Cheek*, 139 S. C. 299, 137 S. E. 734 (1927); *Wilson v. Kearsse*, 145 S. C. 155, 143 S. E. 15 (1928); *Sumner v. Seaboard, etc., Ry. Co.*, 128 S. C. 138, 121 S. E. 472 (1924); *Dempsey v. Western Union Tel. Co.*, 92 S. C. 577, 75 S. E. 977 (1912); *Rogers v. Wunderlich*, 135 S. C. 307, 133 S. E. 545 (1926); *State v. Carson*, 131 S. C. 42, 126 S. E. 757 (1925); *State v. Criddle*, 125 S. C. 264, 118 S. E. 424 (1923); *Sloan v. Lee*, 121 S. C. 426, 114 S. E. 408 (1922); *Lucius v. Du Bose*, 114 S. C. 375, 103 S. E. 759 (1920); *Holden v. Cantrell*, 100 S. C. 265, 84 S. E. 826 (1915); *Tant v. Southern Ry.*, 87 S. C. 184, 69 S. E. 158 (1910); *Evans v. Blue Ridge Ry. Co.*, 92

S. C. 77, 75 S. E. 275 (1912); Fogle v. Southern Ry. Co., 83 S. C. 200, 65 S. E. 206 (1909); Ohio Pottery & Glass Co. v. Talbert, 90 S. C. 564, 73 S. E. 1037 (1912); Sandel v. Whisenhunt, 168 S. C. 129, 167 S. E. 166 (1932); Munn v. Price, 167 S. C. 98, 165 S. E. 777 (1932).

Objection that no evidence supported findings or verdict of punitive damages could not be raised in Supreme Court, where such objection was not raised below on motion for nonsuit or directed verdict. Hooper by Guardian v. Hutto, 160 S. C. 404, 158 S. E. 726 (1931).

That the evidence was too remote, speculative, and consequential to support the verdict should not be made by motion for new trial. Guess v. Atlantic Coast Line R. Co., 88 S. C. 87, 70 S. E. 427 (1911); Wyatt v. Cely, 86 S. C. 539, 68 S. E. 657 (1910).

Alleged error in failing to direct verdict for defendant could not be reviewed where defendant made no motion for nonsuit or direction of verdict. McIntyre v. United Five Cent & Ten Cent Stores, 171 S. C. 273, 172 S. E. 220 (1934).

Resolving doubts concerning motion to direct verdict.—In a criminal case, the doubt whether an important point was made in a motion to direct a verdict will be solved in favor of defendant. State v. Daniel, 83 S. C. 309, 65 S. E. 236 (1909); Pendarvis v. General Asbestos & Rubber Co., 101 S. C. 347, 85 S. E. 773 (1915); Porter v. Poe Mfg. Co., 102 S. C. 488, 87 S. E. 418 (1912); Scott v. Seymour, 105 S. C. 42, 89 S. E. 398 (1916); Ragin v. Northwestern R. Co., 108 S. C. 171, 93 S. E. 860 (1917); Bellamy v. Grand Lodge, 110 S. C. 315, 96 S. E. 293 (1919); Beauchamp v. Winnsboro Granite Corp., 113 S. C. 522, 101 S. E. 856 (1920); State v. Stevens, 116 S. C. 210, 107 S. E. 906 (1921).

Proof of venue.—The point that there is no proof of the venue must be first made in a motion to direct a verdict for accused. This rule applies to criminal, as well as civil, cases. State v. McCain, 118 S. C. 26, 110 S. E. 79 (1921).

77

Conduct of attorney in argument before jury.—No attorney shall, in argument of any cause before a jury, address or refer to by name any member of the jury he is addressing, or otherwise personally appeal to any member thereof.

78

Motion to require plaintiff elect cause of action—notice—hearing.—No motion to require the plaintiff to elect as to which cause of action alleged in the complaint he will rely on shall be made, unless previous notice thereof in writing, stating the grounds, is given not less than four days before the hearing. But if such notice be given the motion may be heard upon the call of the case for trial or at any time prior thereto.

This rule shall be effective as of June 1, 1942.

79

Motion non obstante veredicto—motion for new trial.—Whenever a motion for a directed verdict, made by either party at the close of all the evidence, is denied, or for any reason is not granted, the trial court may, after verdict, upon motion made therefor, order judgment to be entered notwithstanding the verdict in favor of the party who was entitled to have a verdict directed in his or its favor. Such motion non obstante veredicto must be made after the reception of the verdict, and before the adjournment of the court in which the case was tried. A motion for a new trial may be joined with the motion non obstante veredicto, or a new trial may be prayed for in the alternative.

80

Separation of jury.—In any case, civil or criminal, which shall have been submitted to the jury for determination, and they shall have deliberated thereon until past nightfall without agreeing upon a verdict, and it appears to the Presiding Judge that their deliberations may extend far into the night or perhaps all night, he may, if he sees fit, in the exercise of his discretion, at such time as he may deem proper, order that the jury be taken by sworn Bailiffs, in charge thereof, to a hotel, or boarding or rooming house, where suitable sleeping quarters are provided, in which the jurors shall retire for the night; and on the following morning, after they have been served with breakfast, they shall be returned by the Bailiffs to their room in the Court House, where they shall resume their deliberations; provided, that the jury shall be kept separate and apart from the general public, and together, as far as practicable and reasonable, in the same hotel, boarding or rooming house, during all this time under the surveillance of the Bailiffs; provided, further, that if through necessity, or otherwise, or if in the Judge's discretion he, for any reason, deems it best, he may keep any juror or jurors separated from any other juror or jurors, but, if this be done, such juror or jurors so separated must at all times be kept separate and apart from the general public in some other suitable hotel, boarding or rooming house, and under the surveillance of a sworn Bailiff, to the end that there shall be no communication with any member of the jury by any third person, and that the jury shall be fully protected from any outside influences.

This rule shall be effective as of September 1, 1951.

Effect of motion non obstante veredicto.—There is no magic in the motion, and it is merely a revival after adverse verdict of a timely motion made before for contrary direction of the verdict. Thus the refusal of the motion and the appeal therefrom brings up for review only the action of the trial court upon the appellant's motion for

directed verdict made at the close of all of the evidence. It is the same as if the appeal were from the original refusal to direct the verdict in favor of the movant. *Gleaton v. Southern Ry. Co.*, 208 S. C. 507, 38 S. E. (2d) 710 (1946).

Cited in *Brissie v. Southern Ry. Co.*, 209 S. C. 503, 41 S. E. (2d) 97 (1947).

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(As of December 15, 1951)

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Rule 1

Return; docketing and remittitur fees

For the purpose of an appeal the case containing exceptions, as agreed upon or settled, shall constitute the Return for this Court. The original shall be filed with the Clerk of the Lower Court, and fifteen copies thereof filed with the Clerk of this Court, one of which shall be certified, and three copies served upon the respondent, or his attorney; all within twenty days after the case containing exceptions shall have been agreed upon or settled. In lieu of said certified copy, a copy agreed to, in writing, by all parties, or their respective attorneys of record, as being a true and correct copy of the original, may be filed. The failure of the appellant to comply with these requirements shall amount to a waiver of his appeal, and upon such failure appearing by the certificate of the Clerk of this Court and the affidavit of the respondent's attorney, the Court below may by order dismiss the appeal and proceed as if no notice of intention to appeal had been given. After the certificate above referred to

has been issued by the Clerk, the case shall not be docketed, except by leave of the Court, after notice to the respondent. The docketing fee of \$3.00 and the remittitur fee of \$1.50 shall be paid when the case is docketed.

This rule is not to be applied retrospectively. *Archer v. Long*, 42 S. C. 545, 20 S. E. 539 (1894).

It will be enforced when invoked. *Johnson v. Johnson*, 44 S. C. 364, 22 S. E. 419 (1895); *Trimmier v. Thomson*, 39 S. C. 554, 17 S. E. 782, 851 (1893); *Lysaght v. Berkeley County Land, etc., Co.*, 41 S. C. 554, 19 S. E. 747 (1894); *Rice v. Mahaffey*, 9 S. C. 281 (1878).

But the court will not let form override substance. *Gibbes v. Greenville & C. R. Co.*, 14 S. C. 385 (1881).

Appellant has twenty days to file agreed case.—This rule gives appellant the whole of twenty days after agreement to file the agreed "case" with the clerk of the court. The fact that such "case" and return were not delivered at the clerk's office till after he had left it, on the twentieth day, and so were not marked "filed" by him until the next day, did not make them too late. *Newman v. Clyburn*, 40 S. C. 549, 18 S. E. 889 (1893).

Agreement to case.—The fact that amendments proposed by one party to a "case" are served on the opposite party, after service of the proposed case and after notice of an application to the court to settle the "case," indicates that the parties have not agreed upon a "case." A return is, therefore, necessary under this rule. *Geddes v. Hutchinson*, 39 S. C. 550, 17 S. E. 560 (1893).

Reinstatement of appeal.—An appeal dismissed by the clerk for failure to file return in accordance with this rule will not be reinstated where neither unavoidable cause for the default, nor mistake or inadvertence are shown. *Venable & Heyman v. Chavous*, 40 S. C. 545, 18 S. E. 943 (1893).

Dismissal order is presumed granted on clerk's certificate.—Under this rule it will be presumed that an order of dismissal was granted on the clerk's certificate, where the certificate was indorsed on the same sheet of paper, and bore the same date as the order. *Crosswell v. Connecticut Indemnity Ass'n*, 49 S. C. 374, 27 S. E. 388 (1897).

As to when rules may be waived, see *Barnett v. Gottlieb*, 98 S. C. 180, 82 S. E. 406 (1914).

As to effect on statutory rights, see *Knobeloch v. Germania Sav. Bank*, 43 S. C. 233, 21 S. E. 13 (1895); *Grollman v. Lipsitz*, 43 S. C. 329, 21 S. E. 272 (1895); *Columbia Water power Co. v. Columbia Land & Invest., Co.*, 42 S. C. 488, 20 S. E. 378, 540 (1894).

For additional related case, see *Lysaght v. Berkeley County Land, etc., Co.*, 41 S. C. 554, 19 S. E. 747 (1894).

Applied in *Whitman v. Seaboard Air Line Ry.*, 107 S. C. 198, 92 S. E. 861 (1917); *O'Leary v. Bradley*, 40 S. C. 551, 18 S. E. 933 (1893); *Marjenhoff v. Marjenhoff*, 40 S. C. 545, 18 S. E. 942 (1893); *Donahue v. Enterprise R. Co.*, 33 S. C. 608, 12 S. E. 560, 665 (1890); *McNair v. Craig*, 34 S. C. 9, 12 S. E. 367, 664 (1891); *Coleman v. Keels*, 31 S. C. 601, 9 S. E. 735 (1889); *Ballew v. Anderson*, 31 S. C. 602, 9 S. E. 743 (1889); *Talbird v. Whipper*, 31 S. C. 600, 9 S. E. 742 (1889); *Davis v. Pollock*, 35 S. C. 584, 13 S. E. 897 (1891); *Nabors v. Latimer*, 30 S. C. 607, 10 S. E. 390 (1888); *State v. Atkins*, 169 S. C. 170, 168 S. E. 540 (1933).

Cited in *McDonald v. Palmetto Theaters*, 196 S. C. 38, 11 S. E. (2d) 444 (1940).

Rule 2

Inspection of record below

The Court may, upon motion of either party or of its own motion, require copies of all or any part of the record or testimony which was before the Court below to be sent up for its inspection and consideration, and it may likewise require a report of the trial, or of any matter relative thereto, to be made by the trial Judge.

Applied in *Venable & Heyman v. Chavous*, 40 S. C. 545, 18 S. E. 943 (1893); *Geddes v. Hutchinson*, 39 S. C. 550, 17 S. E.

560 (1893); *Donahue v. Enterprise R. Co.*, 33 S. C. 608, 12 S. E. 560, 665 (1890).

Cited in *Coleman v. Lurey*, 199 S. C. 442, 20 S. E. (2d) 65 (1942).

Rule 3

Attorneys, guardians and parties

The attorneys and guardians *ad litem* of the respective parties in the Court below, shall be deemed the attorneys and guardians of the same parties respectively in this Court, until others shall be retained or appointed, and notice thereof shall be served on the adverse party. When any party to a judgment, brought by appeal into this Court, shall die pending such appeal, any party in interest shall be entitled to move the Court, for an order making the proper representative of such deceased person a party to such appeal; and when, by reason of such decease, the proper parties appellant are not before the Court, and due means to have the parties represented on the record of this Court are not taken at the next ensuing term, the respondent shall be entitled on due proof of such facts, to move this Court to dismiss such appeal.

As to substitution of legal representative, 289, 351 (1891); Poore v. Poore, 105 S. C. see Aultman v. Utsey, 35 S. C. 596, 14 S. E. 206, 89 S. E. 569 (1916).

Rule 4

Contents of transcript of record

Section 1. The "Return" filed in this Court shall be designated the "Transcript of Record", and shall contain as near as possible, in the following order: the title; index; statement; pleadings (testimony, charges, orders, judgments or other proceedings); exhibits; exceptions; agreement of counsel on preparation of Case containing Exceptions, or order of trial Judge settling the case.

Disregard of trial court rulings.—On a motion to dismiss an appeal because it does not comply with the provisions of this rule, the court held that the motion might have merit if plaintiffs' counsel were in position to make it. But since his persistent disregard of the various rulings of the trial court was responsible for numerous and repetitious exceptions made by the defendant, plaintiffs' counsel cannot take advantage of a violation of this rule, in view of the effect of his own violation of rules of court in relation to the introduction of evidence against, and in spite of, the rulings of the trial court that such evidence was irrelevant and incompetent. *Cox v. American Oil Co.*, 183 S. C. 519, 191 S. E. 704 (1937).

Applied in *Sullivan v. Charleston & W. C. Ry.*, 85 S. C. 532, 67 S. E. 905 (1910).

Section 2. The Title:

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from County
....., Judge

A Appellant or Respondent
vs.
B Appellant or Respondent

TRANSCRIPT OF RECORD

C Attorney for Appellant with P. O. Address
D Attorney for Respondent with P. O. Address

Nothing shall be printed on the title page except the title.

When more than one attorney or firm of attorneys are noted on the Transcript of Record as counsel for either party, service of notices and copies of the Transcript of Record and Briefs on the first named attorney or firm of Attorneys whose names appear will be sufficient service of notice to all.

Every Transcript of Record shall contain an index to the principal matters therein, and every Brief when it contains more than ten pages shall contain a like index.

Section 3. The "statement" shall contain in concise, connected and narrative form, but not necessarily in the order herein mentioned, the following information: The date of the commencement of the action; the issues made by the pleadings; the term of the Court below at which it was tried; the mode of trial; the amount involved on appeal; the date and nature of the order of judgment appealed from; and of such other orders, judgments and proceedings in the Court below as may have affected it, or may throw light upon the questions involved in the appeal; any changes made in the parties by death, substitution or otherwise; and a concise narrative of the facts or evidence as agreed upon or settled. Nothing should be omitted that is necessary to a proper understanding and decision of the questions to be decided, and nothing else must be inserted. Pleadings, orders, judgments, charges and exhibits must not be set out in full, unless it be necessary to a proper construction of them, and only when that is desired. Even then all formal allegations, such as the incorporation of a party, appointment of guardian *ad litem* or other representatives, must be omitted, unless necessary to support a ground of appeal. In setting out the pleadings, etc., where that is necessary, the title and verification must be omitted, unless the form of verification is questioned.

Appeal is not dismissed if judgment entry not shown.—Under the provisions of this section, the failure to show entry of a judgment is not so essential as to dismiss an appeal. *Spartan Mills v. Law*, 186 S. C. 61, 194 S. E. 653 (1938).

Disputed statement of involved issues.—It is not contemplated that the contents of the "statement" in a transcript of record shall include a disputed statement of the issues involved. *Wallace v. Campbell Limestone Co.*, 198 S. C. 196, 17 S. E. (2d) 309 (1941).

For additional related cases, see *Twigg v. Williams*, 98 S. C. 431, 82 S. E. 676 (1914); *Lancaster v. Columbia*, 104 S. C. 228, 88 S. E. 463 (1916).

Cited in *Hanner v. Hillcrest Land Co.*, 165 S. C. 298, 163 S. E. 727 (1932); *International Shoe Co. v. United States Fidelity & Guaranty Co.*, 186 S. C. 271, 195 S. E. 546 (1938); *Brandt v. Standard Mut. Life Ass'n*, 199 S. C. 247, 19 S. E. (2d) 105 (1942); *State v. Reggen*, 214 S. C. 370, 52 S. E. (2d) 708 (1949).

Section 4. Undisputed facts must be stated without the testimony, and only the testimony as to disputed facts shall be stated, omitting all that is irrelevant to the issues to be decided.

When it is necessary to print the testimony, or any part thereof, the same shall be printed in question and answer form as taken by the official stenographer, unless otherwise agreed to by parties or attorneys. Only the necessary and pertinent testimony to which one or more exceptions relate shall be printed, and in case more than the necessary testimony is printed, then the Court shall tax the cost of all testimony unnecessarily printed against the offending party.

Cross reference.—For statutory provisions similar to the second paragraph of this rule, see § 7-425.

Only testimony pertinent to issues on appeal should be printed. *Anderson v. Ætna Cas. & Sur. Co.*, 175 S. C. 254, 178 S. E. 819 (1934).

Payment for additional printing.—Appellant, proposing to print only testimony to which exceptions referred, should not be re-

Section 5. Photographs, plats and diagrams must, where practicable, be reduced or drawn on a size which permits them to be printed and inserted in the case, without folding more than one time. Where they are necessarily larger, they must not be attached to the case, but must be filed separately.

Cited in *Greer v. Keaton*, 98 S. C. 192, 82 S. E. 424 (1914).

Section 6. Each exception must contain a concise statement of one proposition of law or fact which this Court is asked to review, and the same assignment of error should not be repeated. Each exception must contain within itself a complete assignment of error, and a mere reference therein to any other exception then or previously taken, or request to charge will not be considered. The exceptions should *not* be long or argumentative in form.

Exceptions are liberally construed where not misleading. *McMahan v. Walhalla Light & Power Co.*, 102 S. C. 57, 86 S. E. 194 (1915). See also, *State v. Atkins*, 126 S. E. 459, 120 S. E. 487 (1923).

Consideration of exception on waiver of breach of rule.—If an examination of an exception, disclosing that it is framed in violation of this rule, also discloses that the exception clearly embraces a meritorious assignment of prejudicial error, the Supreme Court will ordinarily waive the breach of the rule and consider the exception. Otherwise, the exception will not generally be considered. *Jackson v. Carter*, 128 S. C. 79, 121 S. E. 559 (1924).

Exception must specify errors.—An exception containing three distinct propositions with no specification of error in any one of them, in violation of this rule, will not be considered. *Adams v. Wilkes*, 118 S. C. 93, 109 S. E. 804 (1921); *State v. Adams*, 100 S. C. 43, 84 S. E. 368 (1915); *Southern Realty & Invest. Co. v. Keenan*, 99 S. C. 200, 83 S. E. 39 (1914).

Under this rule exceptions should state the grounds of the motion for new trial and the requests to charge, or so much as appellant wishes to have the court consider, and then state in the record that the exceptions correctly stated the ground of motion and requests to charge. *Holden v. Cantrell*, 100 S. C. 265, 84 S. E. 826 (1915).

And avoid too general statements thereof.—An exception which simply stated that

quired to pay for additional printing insisted on by solicitor and circuit judge. *State v. Singleton*, 167 S. C. 543, 166 S. E. 725 (1932).

Cited in *Graydon v. Standard Bldg. & Loan Ass'n*, 145 S. C. 551, 143 S. E. 259 (1928); *International Shoe Co. v. United States Fidelity & Guaranty Co.*, 186 S. C. 271, 195 S. E. 546 (1938).

the trial judge abused his discretion in granting a new trial was held to be within this rule and too general to be considered. *State v. Glenn*, 195 S. C. 410, 11 S. E. (2d) 859 (1940).

By containing complete assignment of error.—Exception which does not contain within itself a complete assignment of error, as required by this rule, will not be considered on appeal. *Nolf v. Patton*, 114 S. C. 323, 103 S. E. 528 (1920).

And concise statement of one proposition of law or fact.—An exception which does not contain a concise statement of one proposition of law or fact will not be considered. *State v. Cooper*, 118 S. C. 300, 110 S. E. 152 (1921).

An exception containing two distinct propositions of law violates this rule. *Honour v. Southern Public Utilities Co.*, 110 S. C. 163, 96 S. E. 250 (1918).

Exceptions referring to other exceptions. Exceptions on matter of error in denying new trial, which referred court to other exceptions for grounds upon which motion was made, violate this rule and will not be considered. *Green v. McDaniel*, 168 S. C. 533, 168 S. E. 197 (1933).

Exception assigning error in admission of two exhibits is obnoxious to this rule. *Union Bleaching & Finishing Co. v. Barker Fuel Co.*, 124 S. C. 458, 117 S. E. 735 (1923).

Gravity of case may not permit refusal to consider exception.—For a case where the court held that one of defendant's excep-

tions violated this section but that the gravity of the case would not permit a refusal to consider the exception, see *State v. Griggs*, 184 S. C. 304, 192 S. E. 360 (1937).

As to useless repetition of same assignment of error, see *Lancaster v. Columbia*, 104 S. C. 228, 88 S. E. 463 (1916); *Newsom v. Poe Mfg. Co.*, 102 S. C. 77, 86 S. E. 195 (1915).

As to statement of motions and requests in exceptions and case, see *Stanford v. Cudd*, 93 S. C. 367, 76 S. E. 986 (1913); *Holden v. Cantrell*, 100 S. C. 265, 84 S. E. 826 (1915).

As to waiver of compliance with rule as a matter of grace, see *Riddle v. George*, 181 S. C. 360, 187 S. E. 524 (1936).

For additional related case, see *State v. Terrell*, 131 S. C. 440, 128 S. E. 409 (1925).

Applied in *Hickson v. Early*, 62 S. C. 42, 39 S. E. 782 (1901); *McIntosh v. Zeigler*, 130 S. C. 287, 125 S. E. 636 (1924); *Kirkpatrick v. Hardeman*, 123 S. C. 21, 115 S. E. 905 (1923); *American Fruit Growers v. King*, 122 S. C. 69, 114 S. E. 861 (1922); *State v. Cooper*, 120 S. C. 280, 113 S. E. 132 (1922); *State v. Ashley*, 121 S. C. 15, 113 S. E. 305 (1922); *Bonnette v. Clow*, 118 S. C. 376, 110 S. E. 794 (1922); *Southern*

Pine Lumber Co. v. Martin, 118 S. C. 319, 110 S. E. 804 (1922); *Neville Bros. v. Kelly*, 94 S. C. 112, 77 S. E. 743 (1913); *Spears v. DuRant*, 76 S. C. 19, 56 S. E. 652 (1907); *Barrett v. Moise*, 61 S. C. 569, 39 S. E. 755 (1901); *Tucker v. Charleston & W. Ry. Co.*, 51 S. C. 306, 28 S. E. 943 (1898); *Dantzler v. National Sur. Co.*, 159 S. C. 463, 157 S. E. 802 (1931); *Blackwell v. Faucett*, 117 S. C. 60, 108 S. E. 295 (1921); *Hydrick v. Fairey*, 132 S. C. 335, 128 S. E. 358 (1925); *State v. Underwood*, 127 S. C. 1, 120 S. E. 719 (1923); *Pinkussohn v. Great Atlantic & Pacific Tea Co.*, 184 S. C. 171, 192 S. E. 283 (1937); *Planters Fertilizer & Phosphate Co. v. McCreight*, 187 S. C. 483, 193 S. E. 405 (1938); *Owens v. Owens*, 193 S. C. 260, 8 S. E. (2d) 339 (1940); *Wilson v. Clary*, 212 S. C. 250, 47 S. E. (2d) 618 (1948); *Gordon v. Rothberg*, 213 S. C. 492, 50 S. E. (2d) 202 (1948).

Quoted in *Pate v. C. I. T. Corp.*, 199 S. C. 244, 19 S. E. (2d) 107 (1942).

Cited in *Landrum v. State Highway Department*, 168 S. C. 139, 167 S. E. 164 (1932); *Smith v. Oliver Motor Co.*, 174 S. C. 464, 177 S. E. 791 (1935); *Collins v. Merrimack Mut. Fire Ins. Co.*, 210 S. C. 207, 42 S. E. (2d) 67 (1947).

Section 7. When the appellant shall serve a proposed case, the pages and the lines of each page of which shall be numbered consecutively, with exceptions separately numbered, the respondent shall, within ten days thereafter, serve upon appellant any proposed amendment thereto, including any additional grounds upon which this Court will be asked to sustain the rulings or judgment below; and on failure to do so, he shall be deemed to have agreed to the proposed case. If all amendments proposed are not agreed to, the appellant shall, within four days after service upon him, serve upon respondent notice of his allowance or disallowance of each proposed amendment, and at the same time, serve notice of the time and place at which the case will be submitted to the trial Judge for settlement, which shall be not less than four nor more than twenty days after the service of such notice. Any party aggrieved by the order of settlement, may appeal therefrom and insert in an appendix to the case as settled, such matters as may be necessary for the proper consideration of his appeal. Should the trial Judge be disabled by death or otherwise from settling the case, the same may be settled before the resident or presiding Judge of the Circuit. In the final preparation of the case for use in this Court, where amendments have been allowed, they must be incorporated at their proper place.

Appeal is not dismissed for non-willful violation.—Where the violation of this rule has not been willful, the appeal will not be dismissed. Respondent may elect to require appellant to reprint the case or eliminate from the court's consideration such parts of the case as were inserted in viola-

tion of the rule. *Crosswell v. Connecticut Indemnity Ass'n*, 51 S. C. 221, 28 S. E. 402 (1897).

Proposed case is assumed to be "agreed" case.—Except on appeal from an order settling a case, the Supreme Court will assume that the proposed case is the "agreed" or

"settled" case, and that all corrections and amendments have been properly inserted therein as required by this rule, unless special permission is obtained to present the case otherwise. *Andrews v. Sumter Commercial & Real Estate Co.*, 87 S. C. 301, 69 S. E. 604 (1910).

Appeal from order of settlement.—That portion of this section allowing an appeal to "any party aggrieved by the order of settlement" may not be restricted or enlarged by the circuit judge. The purpose of the rule is to provide a method of review in case prejudicial error should be committed in the order settling the transcript of record. Either party, if aggrieved, is given the right to appeal to the Supreme Court from such order, and to print in an appendix such matters as are necessary to enable the Supreme Court to give proper consideration to such appeal. *Copeland v. Craig*, 193 S. C. 484, 8 S. E. (2d) 858 (1940).

Supreme Court controls contents of appendix.—The practice contemplated is for the Supreme Court, rather than the circuit judge, to pass final judgment upon the contents of the appendix. When the circuit judge has issued his order settling the contents of the transcript proper, his order settles the contents of that record, but he has not been given power by the rule to direct or control the contents of the appendix. *Copeland v. Craig*, 193 S. C. 484, 8 S. E. (2d) 858 (1940).

Section 8. While respondent may be restricted in argument to such additional sustaining grounds as noticed by him, this Court reserves the right to sustain any ruling, order or judgment upon any grounds appearing in the record.

Applied in *Marlow v. Conway Iron Works*, 130 S. C. 256, 125 S. E. 569 (1925); *Walker v. Preacher*, 185 S. C. 462, 194 S. E. 868 (1938); *Winthrop v. Mullins*, 211 S. C. 351, 45 S. E. (2d) 332 (1947).

Allowance of respondent's amendments.—Allowance of respondent's amendments is not error because appellant is compelled to print the entire record. *McLaurin v. Edkins*, 114 S. C. 193, 103 S. E. 531 (1920).

Exception not considered by Supreme Court.—Where the transcript of record did not show that the respondent served upon the appellant notice of additional grounds upon which the Supreme Court would be asked to sustain the rulings or judgment below, as is required by this rule, and where counsel for respondent, in their brief and orally before the Supreme Court, argued on exception not decided or passed upon by the court below, to which appellant's counsel made timely objection, such exception should not be considered by the Supreme Court. *Green v. Bennettsville*, 197 S. C. 313, 15 S. E. (2d) 334 (1941).

Applied in *Federal Intermediate Credit Bank v. Epstin*, 151 S. C. 67, 148 S. E. 713 (1929); *Nott v. Thomson*, 35 S. C. 589, 14 S. E. 23 (1893); *Kizer v. Woodmen of the World*, 177 S. C. 70, 180 S. E. 804 (1935); *Robinson v. Watson*, 198 S. C. 396, 18 S. E. (2d) 215 (1941); *Epworth Orphanage v. Long*, 199 S. C. 385, 19 S. E. (2d) 481 (1942).

Cited in *International Shoe Co. v. United States Fidelity & Guaranty Co.*, 186 S. C. 271, 195 S. E. 546 (1938); *State v. Reggen*, 214 S. C. 370, 52 S. E. (2d) 708 (1949).

Quoted in *Bradley v. Guess*, 165 S. C. 161, 163 S. E. 466 (1932).

Stated in *Prudential Ins. Co. v. Cannon*, 211 S. C. 134, 44 S. E. (2d) 25 (1947).

Rule 5

Copies and form of transcript of record

All transcripts of record shall be printed in book form, on white, unglazed, book paper of sixty pound weight and in eleven point type on a thirteen point slug, the lower case alphabet measuring not less than two inches; and on pages of the same size as the reports of this Court. Twenty-five copies shall be printed for the use of the Court and of counsel. Fifteen copies shall be filed with the Clerk for the use of the Court and three copies forwarded to the attorney for the respondent. The folios (or one hundred words) numbering from the commencement to the end of the record, shall be printed on the outer margin of the page. Emphasis may be added only by italics or blackfaced

type; not by capitals. Strict conformity with the foregoing provisions shall be required and the Clerk is directed to return to the appellant any Transcript of Record which fails to conform with the rules of this Court.

Where party not penalized for violation.—Where the folios of the transcript of record were not numbered as required by this rule, and where such omission was not called to the attention of the clerk whose duty it is under this rule to return the record to ap-

pellant, and where further, no motion was made during the term in regard to such omission, the Court, nevertheless, refused to penalize the appellant therefor. *McLeod v. Southern Ry. Co.*, 188 S. C. 14, 198 S. E. 425 (1938).

Rule 6

Typewritten or mimeographed records and briefs

Section 1. *Typewritten Records in Extraordinary Cases.* If a party shall file with the Clerk an affidavit that he is unable to pay for printing the Transcript of Record or Briefs, he shall be permitted to use typewritten copies.

Typewriting will be permitted only when double spaced upon linen paper eight by thirteen inches in size; carbon copies of the same grade may be used, provided they are clearly legible.

Papers in typewriting must have a blank margin of an inch and a half on the left. If more than two pages be used they shall be fastened at the top so as to read continuously.

In every case where printing is dispensed with, the attorney for the party must file an affidavit that he believes his client to be unable to pay for printing.

It shall be the duty of the Clerk of the Court to see that this rule is complied with before filing any of said papers.

Section 2. Such party may in lieu of said typewritten copies of the Transcript of Record and Briefs herein authorized, serve and file mimeographed or machine duplicated copies, thereof; provided, however, that such mimeographed or machine duplicated copies must be made upon white paper of not less than 20 pounds weight and conform in size and be bound together just as the Rule provides for printed Transcript of Record and Briefs.

In such cases in the taxation of costs in the Supreme Court, a party using such mimeographed or machine duplicated copies shall be allowed to tax only the actual cost of the mimeographing or machine duplicating of the required number of copies of the Transcript of Record and Briefs.

Rule 7

Disposition of copies of record

The fifteen copies of the Record required by Rule 5 shall be disposed of as follows: One copy to each of the Justices, one for the Reporter, one for the West Publishing Company, one for the Library of the Supreme Court, one for the trial Judge, and the remainder for the use of the Court.

Rule 8

Briefs

Section 1. All Briefs must be printed on white, unglazed book paper in the same style, size and type as required for Transcripts of Record.

An admirable specimen brief on appeal is published in appendix to 10 Rich. (44 S. C. L.) 554-576.

For additional related cases, see *Brown v. Barrineau*, 102 S. C. 441, 86 S. E. 769 (1915); *McElwee v. Kennedy*, 59 S. C. 335, 37 S. E. 920 (1900); *New England Mortg. Security Co. v. McMillan*, 41 S. C. 547, 19 S. E. 692, 695 (1894); *Union Mortg. etc., Co. v. Brown*, 30 S. C. 552, 17 S. E. 724 (1893); *Trimmier v. Thomson*, 39 S. C. 554, 17 S. E. 782, 851 (1893); *Booker v. Smith*,

33 S. C. 611, 12 S. E. 628 (1891); *Veronee v. Bell*, 33 S. C. 612, 12 S. E. 664 (1891); *Wade v. Couch*, 32 S. C. 583, 10 S. E. 1103 (1890); *Vaughn v. Morgan*, 31 S. C. 602, 9 S. E. 743 (1889); *Bell v. Bell*, 103 S. C. 95, 87 S. E. 540 (1915); *Cave v. Cave*, 101 S. C. 40, 85 S. E. 244 (1915); *Lorenzo v. Atlantic Coast Line R. Co.*, 101 S. C. 409, 85 S. E. 964 (1915); *Jordan v. Southern Ry. Co.*, 100 S. C. 284, 84 S. E. 871 (1915); *Phillips-Patterson Co. v. Northwestern R. Co.*, 108 S. C. 166, 93 S. E. 868 (1917).

Section 2. The Brief of appellant shall be preceded by a statement of the questions involved.

This statement of the questions involved must be set out in the briefest and most general terms. It should never exceed one page, unless the questions involved absolutely require it and must always be printed on the first page of the Brief, without any other matter appearing thereon. Ordinarily no point will be considered which is not set forth in the statement of the questions involved or suggested thereby.

Exceptions not argued in appellant's printed brief are abandoned. *Echols v. Seaboard Air Line Ry. Co.*, 174 S. C. 537, 178 S. E. 139 (1935).

Stated in *Holly Hill Lumber Co. v. Mc-*

Coy, 203 S. C. 59, 26 S. E. (2d) 175 (1943), affirmed in 205 S. C. 60, 30 S. E. (2d) 856 (1944).

Cited in *Hoile v. National Sur. Corp.*, 204 S. C. 110, 28 S. E. (2d) 638 (1944).

Section 3. The Brief of argument shall be divided into as many parts as there are questions to be argued; shall have at the head of each part in distinctive type, or in type distinctively displayed, the particular point treated therein, followed by such discussion and citation of authorities as is deemed pertinent; and under each head shall refer to the specific exception alleged to raise the question being considered therein.

Section 4. Respondent's Brief need contain only his argument, but he may add a counter-statement of the questions involved; unless he does so, or in his Brief otherwise challenges those of appellant, it will be assumed he is satisfied with them.

Exceptions not argued in appellant's printed brief are abandoned. *Echols v. Seaboard Air Line Ry. Co.*, 174 S. C. 537, 178 S. E. 139 (1935).

Cited in *Alexander v. Durham Life Ins. Co.*, 181 S. C. 331, 187 S. E. 425 (1936).

Section 5. The appellant, if he desires, may file a reply Brief.

Section 6. A disbursement for printing more than twenty pages of a brief shall not be taxed against the losing party. A more extended argument, may, however, be printed at the expense of the party filing the same.

Section 7. This Court will not consider any fact which does not appear in the Transcript of Record, and, therefore, counsel must not embody in their Briefs, any fact which does not appear in the Transcript of Record. Nor will any fact stated in an exception be considered, unless it appears from the Transcript of Record that it is true. If counsel desire to add any facts to those stated in the Transcript of Record they must either obtain the written

consent of opposing counsel to the insertion of such additional facts, or they must, upon due notice, move this Court before the argument commences, for leave to insert such additional facts. All such additional facts inserted by consent or by the permission of the Court shall be printed.

Motion to insert additional facts in record.—This rule does not give a right, as a matter of course, to insert additional facts in the record. The motion for permission to do so is addressed to the discretion of the court. *Furman v. Nelson*, 208 S. C. 249, 37 S. E. (2d) 741 (1946).

Proper denial of such motion.—When neither in the notice of motion for permission to insert additional facts in the record nor in the accompanying affidavit was any rea-

son assigned for the failure to include such additional testimony in the transcript of record, and also when no explanation was given for making such motion at a late stage in the appeal, the granting of such a motion should not be permitted. *Furman v. Nelson*, 208 S. C. 249, 37 S. E. (2d) 741 (1946).

Cited in *Hanner v. Hillcrest Land Co.*, 165 S. C. 298, 163 S. E. 727 (1932).

Section 8. No Brief or paper will be received either through the Clerk or otherwise, after a case has been argued or submitted, except upon leave granted at the time of the argument, or upon leave of one of the Justices.

Section 9. In all cases to be reached for hearing at any monthly term of the Court, the appellant shall, at least twenty days before the commencement of such monthly term, serve three copies of his brief on counsel for the respondent and deliver to the Clerk fifteen copies thereof; five days before the commencement of any monthly term of the Court the respondent shall serve three copies of his brief on counsel for the appellant and deliver to the Clerk fifteen copies thereof; one day before the case is called for hearing the appellant may file with the Clerk fifteen copies of a reply brief and serve three copies thereof on counsel for respondent.

Upon the failure of the appellant to file and serve his brief within the time prescribed, the Clerk of this Court shall sign an order dismissing the appeal.

If the appellant desires an extension of time in which to file his brief, he must secure the consent of the respondent or his attorney or the Order of one of the Justices of the Court granting the extension, said agreement or Order to be filed in the office of the Clerk. An Order granting an extension of time will only be given upon a good and sufficient showing. A case dismissed by the Clerk will not be reinstated except for good cause, upon motion made in open court. If the case is reinstated, the Court will tax against the appellant such costs as it deems proper.

Section 10. Counsel desiring to attack or argue against a decision of this Court, with a view to asking the Court to review, modify, or overrule the same, must petition the Court in writing, at least four days before the call of the case in which such argument is sought to be made, asking permission to do so, and set forth the reasons why the decisions in question should be reviewed, modified, or overruled.

Section 11. The South Carolina Equity Reports, beginning with 1 De Sausure Equity and ending with 14 Richardson Equity, shall be numbered in the following sequence, and they may be so cited in this and the other Courts of the State:

1 De Saussure	1 S. C. Eq.	2 Richardson	19 S. C. Eq.
2 De Saussure	2 S. C. Eq.	1 Strobhart	20 S. C. Eq.
3 De Saussure	3 S. C. Eq.	2 Strobhart	21 S. C. Eq.
4 De Saussure	4 S. C. Eq.	3 Strobhart	22 S. C. Eq.
Harper	5 S. C. Eq.	4 Strobhart	23 S. C. Eq.
1 McCord	6 S. C. Eq.	3 Richardson	24 S. C. Eq.
2 McCord	7 S. C. Eq.	4 Richardson	25 S. C. Eq.
Bailey	8 S. C. Eq.	5 Richardson	26 S. C. Eq.
Richardson's Cases	9 S. C. Eq.	6 Richardson	27 S. C. Eq.
1 Hill	10 S. C. Eq.	7 Richardson	28 S. C. Eq.
2 Hill	11 S. C. Eq.	8 Richardson	29 S. C. Eq.
Riley	12 S. C. Eq.	9 Richardson	30 S. C. Eq.
Dudley	13 S. C. Eq.	10 Richardson	31 S. C. Eq.
Rice	14 S. C. Eq.	11 Richardson	32 S. C. Eq.
Cheves	15 S. C. Eq.	12 Richardson	33 S. C. Eq.
McMullen	16 S. C. Eq.	13 Richardson	34 S. C. Eq.
Speers	17 S. C. Eq.	14 Richardson	35 S. C. Eq.
1 Richardson	18 S. C. Eq.		

The South Carolina Law Reports, beginning with 1 Bay and ending with 15 Richardson, shall be numbered in the following sequence, and they may be so cited in this and the other courts of the State.

1 Bay	1 S. C. L.	1 McMullen	26 S. C. L.
2 Bay	2 S. C. L.	2 McMullen	27 S. C. L.
1 Brevard	3 S. C. L.	1 Spears	28 S. C. L.
2 Brevard	4 S. C. L.	2 Spears	29 S. C. L.
3 Brevard	5 S. C. L.	1 Richardson	30 S. C. L.
1 Treadway	6 S. C. L.	2 Richardson	31 S. C. L.
2 Treadway	7 S. C. L.	1 Strobhart	32 S. C. L.
1 Mill (Constitutional)	8 S. C. L.	2 Strobhart	33 S. C. L.
2 Mill (Constitutional)	9 S. C. L.	3 Strobhart	34 S. C. L.
1 Nott and McCord	10 S. C. L.	4 Strobhart	35 S. C. L.
2 Nott and McCord	11 S. C. L.	5 Strobhart	36 S. C. L.
1 McCord	12 S. C. L.	3 Richardson	37 S. C. L.
2 McCord	13 S. C. L.	4 Richardson	38 S. C. L.
3 McCord	14 S. C. L.	5 Richardson	39 S. C. L.
4 McCord	15 S. C. L.	6 Richardson	40 S. C. L.
Harper	16 S. C. L.	7 Richardson	41 S. C. L.
1 Bailey	17 S. S. L.	8 Richardson	42 S. C. L.
2 Bailey	18 S. C. L.	9 Richardson	43 S. C. L.
1 Hill	19 S. C. L.	10 Richardson	44 S. C. L.
2 Hill	20 S. C. L.	11 Richardson	45 S. C. L.
3 Hill	21 S. C. L.	12 Richardson	46 S. C. L.
Riley	22 S. C. L.	13 Richardson	47 S. C. L.
Dudley	23 S. C. L.	14 Richardson	48 S. C. L.
Rice	24 S. C. L.	15 Richardson	49 S. C. L.
Cheves	25 S. C. L.		

Section 12. Whenever a South Carolina case is cited in a brief of counsel, the volumes and pages of both the South Carolina Reports and the South Eastern Reporter shall be given if the case is reported in both publications.

Rule 9

Docketing; continuances

Section 1. A cause shall not be docketed by agreement of counsel but only upon filing of the Return in conformity with Rule 1. Causes will be docketed in the order in which the returns are filed.

Applied in *Mott Iron Works v. Clark*, 84 S. C. 493, 66 S. E. 680 (1910).

Section 2. A cause reached for hearing shall not be continued beyond the next monthly term of the Court. If the cause so continued is not ready for hearing when reached at the succeeding term, it will automatically be stricken from the docket with leave to restore as of the date of the restoration, unless otherwise ordered by the Court.

Rule 10

Party not ready to proceed with argument

When a case is called for argument, if the appellant has filed a brief and is not ready to proceed with the argument, the Court may, in its discretion, consider the case as submitted on behalf of appellant and proceed with the argument on behalf of respondent. If respondent is not ready to proceed and has filed no brief, appellant shall proceed *ex parte*. If respondent has filed a brief, but is not ready to proceed with the argument, the case shall be treated as submitted by him and appellant shall proceed *ex parte*.

For related cases, see *Booker v. Smith*, 33 S. C. 611, 12 S. E. 628 (1891); *Garrison v. Cagle*, 33 S. C. 610, 12 S. E. 628 (1890); *Veronee v. Bell*, 33 S. C. 612, 12 S. E. 664 (1891); *Barrett v. Faust*, 33 S. C. 612, 12

S. E. 664 (1891); *Harman v. Town Council*, 32 S. C. 583, 10 S. E. 552 (1889); *Wade v. Couch*, 32 S. C. 583, 10 S. E. 1103 (1890); *Vaughn v. Morgan*, 31 S. C. 602, 9 S. E. 743 (1889).

Rule 11

Preference

Causes shall have preference, and may be moved out of their order as provided by law.

Rule 12

Time for oral argument

In the hearing of causes in this Court, counsel will be limited to 30 minutes on each side, with 10 minutes to appellant in reply, in which will be counted the time occupied in reading the case, and the time thus allowed may be apportioned amongst the counsel on the same side at their discretion. Such time may be extended upon special application, in writing, to be filed at least ten days before the case is placed by the Clerk on the roster for hearing, stating reasons satisfactory to the Court for such extension, or it may be further limited by the Court, when it appears from the record that a shorter time will be sufficient for oral argument.

Rule 13

Reading from books; extracts

Counsel will not be permitted to read from books, except by special leave of the Court, but written or printed extracts therefrom may be submitted.

Rule 14

Court officer not to be surety

No member of the bar or officer of the Court shall sign, as surety, any bond

or other obligation which may be required by an order of this Court, under pain of being in contempt.

Rule 15

Agreements

No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced in writing to the form of an order by consent and entered.

Applied in *Brewton v. Inter-Carolinas Motor Bus Co.*, 167 S. C. 151, 166 S. E. 85 (1932).

Rule 16

Motions

All motions made to the Court or a Justice at Chambers must be reduced to writing, copies of which must be served on the opposite party with notice of the motion four days before the day on which such motion is to be heard; all such motions to be docketed in the office of the Clerk of this Court at least one day before the time set for the hearing thereof; all orders made thereon shall be filed with the Clerk of this Court immediately upon said orders being taken. Provided, That upon a proper showing for that purpose the Court or the Justice before whom the motion is made, may prescribe a shorter time for the service of notice on the opposite party.

Motions will be heard on the opening of the Court each day; arguments thereon, when permitted by the Court, shall be very brief.

Applied in *C. I. T. Corp. v. Corley*, 196 S. C. 339, 13 S. E. (2d) 440 (1941).

Rule 17

Remittitur; petitions for rehearing

Section 1. The remittitur shall contain a copy of the judgment of the Court, shall be sealed with the seal and signed by the Clerk of the Court, and shall not be sent to the Court below until ten days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment or decree of the Court unless otherwise ordered by the Court.

Section 2. Petitions for rehearing must be filed before the judgment of this Court has been remitted to the Court below. The petition for that purpose, together with five copies thereof, must be filed with the Clerk, stating particularly the points supposed to have been overlooked or misapprehended by the Court, *without argument*, with a certificate from some counsel not concerned in the case that there is merit in such grounds, accompanied with a consent in writing signed by the parties and not by counsel, that the stay of remittitur shall be granted upon condition that the status of the property involved in the case, where specific property is involved, shall not be disturbed until after the final determination of the case. Upon the filing of the required petition and copies, the Clerk will stay the remittitur, forward the original petition to the Justice who rendered the opinion, and a copy to each of the

other Justices and file a copy with the record. The Justice to whom the original is forwarded will take the necessary steps in having the petition passed upon.

Petition for rehearing must show points supposedly overlooked or misapprehended by the court. Its purpose is not to present points lawyers of losing parties overlooked or to have the case tried in Supreme Court for a second time. *Arnold v. Carolina Power & Light Co.*, 168 S. C. 163, 167 S. E. 234, (1933).

Nonconformity to rule may be ignored.—Where petition failed to conform to this rule in important particulars, and on that ground might properly have been disregard-

ed in its entirety, nevertheless, due to the importance of the issues involved and the court's desire to leave open no room for doubt, the infirmities in the petition were overlooked. *Craig v. Pickens County*, 189 S. C. 164, 200 S. E. 825 (1939).

Applied in *Thomas v. Lynch*, 87 S. C. 44, 68 S. E. 817 (1910); *Hicks v. Hicklin*, 187 S. C. 355, 197 S. E. 390 (1938); *First Nat. Bank v. United States Fidelity & Guaranty Co.*, 207 S. C. 15, 35 S. E. (2d) 47 (1945).

Rule 18

Enlargement of time; orders; jurisdiction

The time prescribed by these Rules for doing any act may be enlarged by the Court, or by either of the Justices thereof; and either of the Justices may make orders in any cause pending in this Court to stay proceedings in the Court below, which, when served with papers on which it was made, shall stay the proceedings according to the terms of the order. Any order may be revoked or modified by the Justice who made it, or in case of his absence or inability to act, by either of the other Justices.

The jurisdiction of this Court shall attach only for the purpose of granting a stay of proceedings in the Court below, when a copy of a notice of appeal with proof of service thereof, certified to by the Clerk of the lower court, has been filed with the Clerk of this Court; but for all other purposes the Circuit Court shall retain jurisdiction until the appeal has been perfected and docketed, as required by Rule 1.

Question requiring initial submission to circuit court after appeal perfected.—This rule definitely indicates that after an appeal has been perfected and docketed as required by Sup. Ct. Rule 1, the jurisdiction of the circuit court ceases. This would apply, even if an undecided motion to enforce a judgment upon which argument had been made was still pending in the circuit court. But of course if, after the jurisdiction of the Supreme Court attaches, a question arises

which ought first to be submitted to the circuit judge, leave to do so may be granted by the Supreme Court upon motion or petition, by way of analogy to the prescribed practice in the matter of motions for new trials upon after-discovered evidence. *McDonald v. Palmetto Theaters*, 196 S. C. 38, 11 S. E. (2d) 444 (1940).

Applied in *State v. Thompson*, 122 S. C. 407, 115 S. E. 326 (1922); *Rylee v. Maret*, 121 S. C. 366, 113 S. E. 483 (1922).

Rule 19

Service of orders and rules

To make the service of an *ex parte* order, or rule to show cause, effectual, a copy of the affidavits, or other proofs on which it was granted, must be served with a copy of such order or rule; and in order to bring any person into contempt for the disobedience of an order the original order must be exhibited to such person, and a copy thereof left with him, or a certified copy thereof must be served upon him. When any person avoids the service of

an order, on application to this court, or to one of the justices thereof, making proof of such fact, special directions will be given as to the service thereof.

Rule 20

Original jurisdiction

Section 1. Neither the court nor any justice thereof will entertain motions for issuance of writs in the original jurisdiction when such motions can be made before the circuit courts, or the judges thereof, in the first instance, without material prejudice to the rights of the parties. If the public interests are involved, or if special grounds of emergency, or other good reasons exist why the original jurisdiction of this court should be exercised, the facts showing such reasons must be stated in the moving papers which must be duly verified.

Purpose of rule.—This rule was adopted to protect the Court from originally hearing an avalanche of cases and to let it conduct its business in an orderly manner. *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

Determination of petition's compliance with rule.—Whether or not a petition for a writ in the original jurisdiction of this court meets the requirements of this rule is for

the determination, in the first instance, of the justice to whom the petition is presented. *King v. Aetna Ins. Co.*, 168 S. C. 84, 167 S. E. 12 (1932).

Applied in *Powell v. Gary*, 200 S. C. 154, 20 S. E. (2d) 391 (1942).

Cited in *Montgomery & Crawford v. Arcadia Mills*, 174 S. C. 252, 177 S. E. 151 (1934).

Section 2. The statutes and rules relative to printing and filing with the clerk the requisite number of copies of the record and arguments of counsel in cases in the appellate jurisdiction must be observed, as far as practicable, in cases in the original jurisdiction in the preparation thereof for hearing on the merits, unless otherwise ordered by the court or the justice hearing the same.

Section 3. Applications for writs or orders in the original jurisdiction will be heard on the opening of the court each day, or may be heard by any Justice of the court at any time, and if the court takes jurisdiction, such cases will be assigned for hearing on the merits not sooner than thirty days thereafter unless it is made to appear that special grounds of emergency exist.

Section 4. This shall not apply to applications for the writ of habeas corpus in criminal cases.

Rule 21

Binding transcripts of record and briefs

Once a year the Clerk shall have bound in suitable volumes the Transcripts of Record and Briefs in all cases heard and submitted, said volumes to be kept in the library for the use of the bar. Typewritten Transcripts of Record and Briefs shall not be bound.

Rule 22

Roster of cases for hearing

Thirty-five days prior to the commencement of any monthly term of the court, the clerk shall mail to the counsel of record of the respective parties to

all causes which will probably be reached for hearing at said term, a list of said cases; and ten days prior to the commencement of any monthly term of the court the clerk shall mail to the counsel of record of all causes set for hearing at said term, a Roster showing the date fixed for the hearing of the cause or causes in which counsel may be interested. No case will be put down for hearing unless the appellant's Brief has been filed.

Rule 23

Dismissal of criminal appeals without merit

After the Return in a criminal action shall have been docketed in this court, the court in open session may dismiss the appeal where it is made to appear that the grounds thereof are manifestly without merit.

Rule 24

Motions for new trials upon after-discovered evidence

The following practice shall be observed in the matter of motions for new trials upon after discovered evidence:

First: In a case in which the Circuit Court has not been deprived of jurisdiction by appeal or otherwise the motion may be made in the Circuit Court.

Second: In a case which is pending upon appeal in the Supreme Court, the motion may not be made in the Circuit Court until after the Supreme Court by order upon motion thereof, shall have suspended the appeal and granted leave to the movant to make the motion in the Circuit Court.

Third: In a case in which the appeal has been disposed of by the Supreme Court and the remittitur transmitted to the Circuit Court, the motion may not be made in the Circuit Court until after the Supreme Court, by order upon motion, shall have granted leave to the movant to make the motion in the Circuit Court; and when the defendant shall be under sentence of death the motion in the Supreme Court must be made not later than the 10th day before the day assigned for the execution of the sentence (exclusive of said day), and upon four days previous notice to the Solicitor, with copies of the moving papers.

Cross references.—As to granting of new trials by circuit courts, see §§ 10-1215, 10-1463 and 17-514. As to extension of time and perfection of appeals, see §§ 7-410 and 7-411.

Rule applies to civil and criminal cases.—Rule 24 of the Supreme Court, as construed in *State v. Hawkins*, 121 S. C. 290, 114 S. E. 538 (1922), applies to civil cases as well as to criminal cases. *Ward v. Bruce*, 178 S. C. 286, 182 S. E. 759 (1935).

No new trial after jurisdiction divested by appeal.—While § 10-1215 provides that all circuit courts shall have power to grant new trials in cases where there has been a trial by jury for reasons for which new trials have usually been granted in courts of

law of the United States, such power is given to the circuit courts in those cases that are properly before them and not in cases where the courts have been divested of jurisdiction by appeal to the Supreme Court, although the appeal has been disposed of and remittitur sent down. *State v. Hawkins*, 121 S. C. 290, 114 S. E. 538 (1922).

The circuit court is without jurisdiction, after an appeal has been taken, in any way to control the final judgment in the case. Since the power of control must rest somewhere, it has accordingly been held that it ought to rest with the court whose judgment it is. *State v. Hawkins*, 121 S. C. 290, 114 S. E. 538 (1922).

Rule 25

Continuances

When it is desired, for any reason whatever, that a case be passed at its regular turn on the list or continued to the next term, the Clerk must be notified before the roster is made up. The party desiring the continuance must secure the consent of opposing counsel.

Rule 26

Appeals argued together

Where there is more than one appeal from the same order, judgment or decree, and where the same question is involved in two or more appeals in different cases, the Court may, in its discretion, order them to be argued together in all particulars as if but a single appeal.

Cross reference.—As to appeal from verdicts prior to judgment, see § 7-5.

Rule 27

Effect of sustaining appeal

When an appeal is sustained on the ground that a nonsuit should have been granted because of a failure of evidence, or because the evidence is susceptible of but one inference, the reversal of the judgment shall have the same effect as if the nonsuit had been ordered, except when the cause of action will be barred by the statute of limitations before a new action can be brought; and when an appeal is sustained on the ground that a verdict should have been directed, the reversal of the judgment shall have the same effect as if a verdict had been returned by the jury under the direction of the court; but this court will not sustain an appeal from the refusal to direct a verdict, when, under all the circumstances, a nonsuit would have been the appropriate remedy.

Rule is not retroactive.—An action commenced before the adoption of this rule is not affected thereby. *Lee v. Unkefer*, 85 S. C. 199, 65 S. E. 989, 67 S. E. 246 (1910). See also, *German American Ins. Co. v. Southern Ry. Co.*, 82 S. C. 1, 62 S. E. 1115 (1908).

It is inapplicable to appeals from a magistrate's court. *Bridges v. Mills Mfg. Co.*, 85 S. C. 520, 67 S. E. 738 (1910).

Effect of judgment reversal by Federal Supreme Court.—Where Federal Supreme Court reversed judgment for plaintiff and remanded case to State Supreme Court for new trial, defendant was not entitled to order directing judgment in its favor. *Tyner v. Atlantic Coast Line R. Co.*, 149 S. C. 89, 146 S. E. 663 (1927).

Discretion of State Supreme Court.—Where the lower court erred in refusing to

direct a verdict, the Supreme Court under this rule may in its discretion either remand the case for such direction or for a new trial. In the case of palpable defect in the State's case, in the interest of administration of justice, the remand for a new trial is to be preferred. *State v. Klugh*, 130 S. C. 160, 125 S. E. 922 (1924); *State v. Phillips*, 134 S. C. 226, 132 S. E. 610 (1926).

Motion for nonsuit where additional evidence is obtainable.—When it appears that a plaintiff might be able to supply additional evidence to support a cause of action, the court will not order a directed verdict under this rule in favor of the defendant, but will sustain the motion for nonsuit when one has been made. *Moseley v. Southern Ry. Co.*, 164 S. C. 193, 162 S. E. 94 (1932).

For additional related cases, see *Taber v. Seaboard Air Line Ry.*, 84 S. C. 291, 66 S.

E. 292 (1909); Crosby v. Seaboard Air Line Ry., 83 S. C. 575, 65 S. E. 827 (1909); Hallsail v. Atlantic Coast Line R. Co., 100 S. C. 483, 85 S. E. 433 (1915); Switzer v. American Ry. Exp. Co., 119 S. C. 237, 112 S. E. 110 (1922); Coffey v. Jenkins, 117 S. C. 321, 109 S. E. 117 (1921); State v. Stevens, 116 S. C. 210, 107 S. E. 906 (1921); Sullivan v. Moore, 84 S. C. 426, 65 S. E. 108, 66 S. E. 561 (1909).

Applied in South Carolina Peach Growers' Ass'n v. Western Union Tel. Co., 149 S. C. 214, 146 S. E. 873 (1929); Peurifoy v. Little, 146 S. C. 1, 143 S. E. 262 (1928); Leitner v. Columbia Ry., etc., Co., 145 S. C. 489, 143 S. E. 273 (1928); White v. McKnight, 146 S. C. 59, 143 S. E. 552 (1928); Equitable Trust Co. v. Columbia Nat. Bank, 145 S. C. 91, 142 S. E. 811 (1928); Terry Packing Co. v. Southern Exp. Co., 143 S. C. 1, 141 S. E. 144 (1927); Straus v. Fidelity & Deposit Co., 143 S. C. 422, 141 S. E. 683 (1927); Grier v. Winyah Lumber Co., 144 S. C. 10, 141 S. E. 685 (1928); Windham v. Black Creek School District, 143 S. C. 511, 141 S. E. 896 (1928); Butts v. Georgetown Mut. Bldg. & Loan Ass'n, 142 S. C. 353, 140 S. E. 700 (1927); Richardson v. Krey Packing Co., 134 S. C. 188, 132 S. E. 44 (1926); Bowman v. Northwestern R. Co., 133 S. C. 298, 130 S. E. 878 (1925); Campbell v. Thayer Mfg. Co., 133 S. C. 219, 130 S. E. 880 (1925); Tuxbury Lumber Co. v. Byrd, 131 S. C. 32, 127 S. E. 267 (1925); Hydrick v. Rhode Island Ins. Co., 131 S. C. 8, 127 S. E. 367 (1924); Colt Co. v. Shealey, 130 S. C. 347, 126 S. E. 48 (1925); Platt v. Columbia, 131 S. C. 89, 126 S. E. 523 (1925); Ruff v. Hudspeth, 122 S. C. 391, 115 S. E. 626 (1923); State v. Burns, 120 S. C. 523, 113 S. E. 351 (1922); Bushardt v. United Invest. Co., 121 S. C. 324, 113 S. E. 637 (1922); State v. Wright, 118 S. C. 496, 110 S. E. 927, 113 S. E. 797 (1922); State v. Tucker, 118 S. C. 238, 110 S. E. 398 (1922); Colt Co. v. Hallman, 118 S. C. 404, 110 S. E. 462 (1922); Sexton v. Noll Const. Co., 108 S. C. 516, 95 S. E. 129 (1918); American Cotton Oil Co. v. Saluda Oil Mill Co., 103 S. C. 317, 89 S. E. 1067 (1916); State v. Miller, 130 S. C. 152, 125 S. E. 298 (1924); State v. Epps, 122 S. C. 272, 114 S. E. 631 (1922); Gaillard v. Globe & Rutgers Fire Ins. Co., 160 S. C. 386, 158 S. E. 727 (1931); Holly Hill Lumber Co. v. Federal Land Bank, 160 S. C. 431, 158 S. E. 830 (1931); Jackson v. Brock, 160 S. C. 471, 159 S. E. 22 (1931); Chicora Bank v. United States Fidelity & Guaranty Co., 161 S. C. 33, 159 S. E. 454 (1931); Ott v. American Fidelity & Cas. Co., 161 S. C. 314, 159 S. E. 635 (1931); McAdams v. School District,

161 S. C. 380, 159 S. E. 654 (1931); Bannister v. Poe Mfg. Co., 162 S. C. 1, 160 S. E. 138 (1931); Fairey v. Southern Ry. Co., 162 S. C. 129, 160 S. E. 274 (1931); Morrison v. Union Indemnity Co., 163 S. C. 137, 161 S. E. 418 (1931); Columbia Weighing Mach. Co. v. Rhem, 164 S. C. 376, 162 S. E. 427 (1931); Fields v. Texas Co., 164 S. C. 478, 162 S. E. 441 (1932); Temple v. Atlantic Coast Line R. Co., 165 S. C. 201, 163 S. E. 644 (1931); Sweeney v. Southern Ry. Co., 165 S. C. 380, 163 S. E. 838 (1932); Johnson v. New York Life Ins. Co., 165 S. C. 494, 164 S. E. 175 (1932); Sherbert v. School District, 169 S. C. 191, 168 S. E. 391 (1933); Huntley v. Sullivan, 170 S. C. 391, 170 S. E. 664 (1933); Citizens' Ins. Agency v. Petersburg Ins. Co., 170 S. C. 531, 171 S. E. 241 (1933); General Motors Acceptance Corp. v. Anderson, 172 S. C. 395, 174 S. E. 268 (1934); Bolt v. Sullivan, 173 S. C. 24, 174 S. E. 491 (1934); Hood v. Life & Cas. Ins. Co., 173 S. C. 139, 175 S. E. 76 (1934); Housand v. Armour & Co., 173 S. C. 268, 175 S. E. 516 (1934); Ellis v. Grand Lodge, 175 S. C. 373, 179 S. E. 310 (1935); Brown v. Equitable Life Assur. Soc., 177 S. C. 112, 180 S. E. 894 (1935); Stewart v. Pioneer Pyramid Life Ins. Co., 177 S. C. 132, 180 S. E. 889 (1935); Epting v. Lexington Water Power Co., 177 S. C. 308, 181 S. E. 66 (1935); Berger v. Lexington Lumber Co., 178 S. C. 72, 182 S. E. 156 (1935); Tucker v. Aetna Life Ins. Co., 178 S. C. 210, 182 S. E. 439 (1935); Parker v. Pacific Mut. Life Ins. Co., 179 S. C. 117, 183 S. E. 697 (1935); Robinson v. Atlantic Coast Line R. Co., 179 S. C. 493, 184 S. E. 96 (1936); Perry v. North Carolina Mut. Life Ins. Co., 180 S. C. 72, 185 S. E. 47 (1936); Perry v. Carolina Theatre, 180 S. C. 130, 185 S. E. 184 (1936); Hice v. Dobson Lumber Co., 180 S. C. 259, 185 S. E. 742 (1936); Delk v. Liggett & Myers Tobacco Co., 180 S. C. 436, 186 S. E. 383 (1936); Clinton Cotton Oil Co. v. Hartford Acci. & Indemnity Co., 180 S. C. 459, 186 S. E. 399 (1936); Watson v. Kennedy, 180 S. C. 543, 186 S. E. 549 (1936); Mellette v. Atlantic Coast Line R. Co., 181 S. C. 62, 186 S. E. 545 (1936); Dangerfield v. Brown, 181 S. C. 120, 186 S. E. 641 (1936); King v. Pilot Life Ins. Co., 181 S. C. 238, 187 S. E. 369 (1936); Littleton v. Roberts, 181 S. C. 303, 187 S. E. 349 (1936); Adcox v. Campbell Limestone Co., 182 S. C. 106, 188 S. E. 657 (1936); Way v. Pacific Mut. Life Ins. Co., 182 S. C. 143, 188 S. E. 805 (1936); Rauton v. Pullman Co., 183 S. C. 495, 191 S. E. 416 (1937); White v. Sovereign Camp, W. O. W. 184 S. C. 215, 192 S. E. 161 (1937);

Bunton v. State Highway Dept., 186 S. C. 463, 196 S. E. 188 (1938); Elmore v. Life Ins. Co. of Virginia, 187 S. C. 504, 198 S. E. 5 (1938); Whetsell v. Sovereign Camp, W. O. W., 188 S. C. 105, 198 S. E. 153 (1938); Coker v. Aetna Life Ins. Co., 188 S. C. 472, 199 S. E. 694 (1938); Smith v. Harmonia Fire Ins. Co., 188 S. C. 484, 199 S. E. 698 (1938); State v. Hedden, 190 S. C. 227, 2 S. E. (2d) 689 (1938); Boggs v. O'Dell, 190 S. C. 442, 3 S. E. (2d) 486 (1939); West v. Jennings, 192 S. C. 225, 6 S. E. (2d) 263 (1939); Sauls v. Sovereign Camp, W. O. W., 193 S. C. 289, 8 S. E. (2d) 500 (1940); Moore v. Hardaway Contracting Co., 193 S. C. 299, 8 S. E. (2d) 511 (1940); Miller v. Central Carolina Tel. Co., 194 S. C. 327, 8 S. E. (2d) 355 (1940); Smith v. Volunteer State Life Ins. Co., 201 S. C. 291, 22 S. E. (2d) 885 (1942); Rabon v. State

Finance Corp., 203 S. C. 183, 26 S. E. (2d) 501 (1943); Camp v. Petroleum Carrier Corp., 204 S. C. 133, 28 S. E. (2d) 683 (1944); State v. Hellams, 209 S. C. 141, 39 S. E. (2d) 212 (1946); Vogel v. Johnson, 213 S. C. 176, 48 S. E. (2d) 717 (1948); Bagwell v. McLellan Stores Co., 216 S. C. 207, 57 S. E. (2d) 257 (1949).

Cited in Blakely v. Atlantic Coast Line R. Co., 172 S. C. 343, 174 S. E. 15 (1934); Suggs v. New York Life Ins. Co., 174 S. C. 1, 176 S. E. 457 (1934); RCA Photophone v. Carroll, 174 S. C. 183, 177 S. E. 23 (1934); Owens v. Sovereign Camp, W. O. W., 174 S. C. 514, 178 S. E. 125 (1935); Sinclair Refining Co. v. Stroup, 194 S. C. 79, 9 S. E. (2d) 214 (1940); Bell v. Bank of Abbeville, 211 S. C. 167, 44 S. E. (2d) 328 (1947).

Rule 28

Stay of sentence in criminal cases

No stay of any sentence in a criminal case which has been affirmed by the judgment of this Court shall be granted, except by order of this Court, or a justice thereof, if the Court be not in session, and after notice of the application therefor, as prescribed by Rule 16.

Cited in Grant v. Richardson, 129 F. (2d) 105 (1942).

Rule 29

Submission of cases without argument

All appeals in Civil cases which do not involve a constitutional question and in which the amount involved is \$500.00 or less, and all appeals in civil cases in which there has not been a final judgment, shall be submitted, without oral argument upon the printed Transcript of Record and briefs of counsel. The brief of counsel for the appellant shall be filed and served within fifteen days from the date of docketing; the respondent's brief within 15 days after appellant's brief shall have been served upon him and the reply of appellant, if any, within five days thereafter. Upon the failure of the appellant to file and serve his brief within the time prescribed, the respondent may give the appellant's attorney notice requiring the same within five days thereafter; and upon failure to so comply, the Clerk of this Court shall sign an order dismissing the appeal.

Constitutional question is not raised by party's mere assertion.—On appeal from order striking pleading, defendant's charge that constitutional question was involved did not of itself raise such question and entitle defendant to have case orally argued.

First Carolinas Joint Stock Land Bank v. Stuckey, 170 S. C. 86, 169 S. E. 843 (1933).

Applied in Jennings v. Southern Ry. Co., 152 S. C. 322, 150 S. E. 309 (1929).

Cited in Taub v. Coker, 162 S. C. 391, 161 S. E. 117 (1931).

Rule 30

Admission to the bar

Section 1. Two examinations for admission to the bar shall be held each year in the City of Columbia, on the first Wednesdays, Thursdays and Fridays of May and November, or on such other days as the Board of Law Examiners may determine.

Section 2. Applicants for admission to the bar must file applications in writing with the Clerk of the Supreme Court, who shall be *ex officio* Secretary to the State Board of Law Examiners. Such applications shall be filed not later than two weeks prior to the date fixed by the rule for the examination, and shall be accompanied by the required filing fee of \$5.00. Every such applicant must have attained his majority before filing the application for admission, and must have been a resident of South Carolina for at least six months prior to standing an examination. A student in a law school of South Carolina for six months will be considered as fulfilling the requirement of residence.

Section 3. Applications for admission must state the age, residence and occupation of the applicant; must show that prior to the commencement of the study of law the applicant had a preliminary general education equivalent to that required for graduation in a high school of this State, giving the names of the schools and colleges attended, and the courses of study taken. The applicant must further show that he has satisfactorily studied a law course comparable to such course as is prescribed by this Rule, either in a recognized law school in some part of the United States or, in a law office, under the direction of a member of the bar of this State for a period of three years during at least thirty-six weeks in each year; and that he has read the entire course of study prescribed by this Rule, or its equivalent. Where applicant claims to have studied texts that are equivalent to the prescribed course, he shall state such equivalents in full.

Section 4. Every application for admission to the South Carolina bar must be supported by the certificates of the instructors, professors and attorneys under whose instruction or direction the applicant had studied. In the case of graduates of law schools, the applicant must present his certificate or diploma for inspection by the Board of Law Examiners at the time of the examination, or if such certificate or diplomas are not obtainable, or cannot be produced, then such applicants must present such other evidence or proof of graduation as the Board, upon consideration of the matter, may require. And every such application must be supported by the certificates of at least three reputable attorneys of this State, to the effect that the applicant is vouched for as a person of good moral character.

Section 5. The following course of study is hereby recommended for applicants for admission, but the full course of study of any law school of the United States which may be deemed reputable by the Board, or reliable works covering the subjects prescribed, will be accepted as equivalent. The works designated as parallel reading are recommended to applicants, but are not absolutely required as part of the required course.

COURSE OF STUDY

LEGAL HISTORY

Dowling, Patterson & Powell's Legal Methods.

Parallel Reading: Kent and Blackstone, or Edmund M. Morgan's Introduction to the Study of Law.

CREDITORS' RIGHTS

Glenn's Fraudulent Conveyances and Preferences (Revised Edition), Glenn on Liquidation.

Parallel Reading: Hanna and McLaughlin's Cases on Creditors' Rights.

PERSONAL PROPERTY

Schouler's Law of Personal Property, or Darlington on Personal Property.

Parallel Reading: Warren's Cases on Property, or Bigelow's Cases on Personal Property (3rd Edition).

REAL PROPERTY

Burdick on Real Property, or Tiffany's Real Property, or Burby on Real Property, or Tiedeman on Real Property.

Parallel Reading: Aigler's Cases on Titles to Real Property (3rd Edition), Warren's Cases on Conveyances, Bigelow's Cases on Rights in Land (3rd Edition).

CRIMINAL LAW

Beale's Criminal Pleading and Practice, or Clark's Handbook on Criminal Law (3rd Edition).

Parallel Reading: Hall's Principles of Criminal Law, Beale's Cases on Criminal Law, Sayre's Cases on Criminal Law, Mikell's Cases on Criminal Procedure, Bishop's Criminal Law.

TORTS

Harper on Torts, or Bohlen's Studies in the Law of Torts, Throckmorton's Cooley on Torts (Student Edition).

Parallel Reading: Bohlen's Cases on Torts (4th Edition), Pound's Cases on Torts, Wilson's Cases on Torts, Ames & Smith's Cases on Torts.

CONTRACTS

Clark on Contracts, or Williston's The Law of Contracts (Students' Edition) or Anson on Contracts.

Parallel Reading: Williston's Cases on Contracts (4th Edition or Students' Edition), Corbin's Cases on Contracts, Costigan's Cases on Contracts.

DAMAGES

Hale on Damages, Sedgwick on Damages (9th Edition).

Parallel Reading: Crane's Cases on Damages (2nd Edition).

NEGOTIABLE INSTRUMENTS

Bigelow's The Law of Bills and Notes and Checks, or Brannan on Negotiable Instruments, or Odgen's Negotiable Instruments.

Parallel Reading: Smith & Moore's Cases on Bills and Notes (4th Edition), Britton's Cases on Bills and Notes.

DOMESTIC RELATIONS

Schouler's Law of the Domestic Relations.

Parallel Reading: Madden on Domestic Relations, McCurdy's Cases on Domestic Relations (3rd Edition).

AGENCY

Mechem's Outline of Law of Agency (3rd Edition).

Parallel Reading: Mechem's Cases on Agency (3rd Edition), Seavey's Cases on Agency.

SALES

Williston on Sales, Vold on Sales.

Parallel Reading: Vold's Cases on Sales.

PARTNERSHIP

Crane on Partnership.

Parallel Reading: Crane and Magruder's Cases on Partnership (Shorter Selection).

PRIVATE CORPORATIONS

Cook on Corporations (7th Edition).

Parallel Reading: Warren's Select Cases, Richard's Cases on Corporations (3rd Edition).

BAILMENT AND CARRIERS

Dobie on Bailments and Carriers.

Parallel Reading: Goddard's Cases on Bailments and Carriers.

INSURANCE

Vance on Insurance.

Parallel Reading: Vance's Cases on Insurance (3rd Edition), Patterson's Cases on Insurance.

WILLS, DESCENT AND ADMINISTRATION OF ESTATES

Atkinson on Wills, or Rallison on Wills.

Parallel Reading: Mechem & Atkinson's Cases on Wills (3rd Edition), Costigan's Cases on Wills (3rd Edition).

TRUSTS

Scott on Trusts, or Bogert (Hornbook) on Trusts (2nd Edition).

Parallel Reading: Scott's Cases on Trusts (3rd Edition).

EQUITY

Pomeroy's Equity Jurisprudence (Student Edition), or Maitland's Equity.

Parallel Reading: Glenn & Redden's Equity Cases.

CODE PLEADING

Phillips on Code Pleading (2nd Edition), or Clark's Code Pleading.

Parallel Reading: Hinton's Cases on Code Pleading (3rd Edition), Throckmorton's Cases on Code Pleading.

EVIDENCE

Wigmore on Evidence (Students' Textbook), or Jones on Evidence, or McKelvey on Evidence (4th Edition).

Parallel Reading: Wigmore's Cases on Law of Evidence, Wigmore's The Principle of Judicial Proof, Morgan & Maguire's Cases on Evidence (2nd Edition).

CONSTITUTIONAL LAW

Cooley's Principles of Constitutional Law (Students' Edition), Constitutions of the United States, and of South Carolina.

Parallel Reading: McLain's Selection of Cases on Constitutional Law, Dowlings's Cases on Constitutional Law (3rd Edition).

ETHICS

Sherwood's Legal Ethics, Hicks' Organization and Ethics of Bench and Bar.

Parallel Reading: Costigan's Cases on Legal Ethics.

STATUTES AND RULES OF COURT

Latest Code of Laws of South Carolina, and all acts of a public nature passed since its adoption, the Bankruptcy Acts, Rules of the South Carolina Supreme Court, Circuit and County Courts and Probate Courts, and Rules of Civil and Criminal Procedure in the United States District Courts.

Section 6. Upon the examination each applicant will be furnished with a copy of the questions to be answered in writing, numbered in regular order, together with the necessary stationery for the preparation of the answers, which should be numbered to correspond with the questions.

Section 7. As each applicant completes his answers he must sign a certificate to the effect that he has not, during the examination, given or received any assistance of any nature whatsoever in making his answers, and must attach the same to his questions.

Section 8. Each application must show whether or not the applicant has ever before attempted to stand the examination for admission. Those applicants who have previously failed to pass the examination must show in detail what work they have done as additional legal study since the unsuccessful examination, which statement of additional study must be attested also by certificate of his preceptor, instructor, or attorney under whose direction he had studied.

Section 9. In all other respects applicants must comply with the statutes regulating admission to the bar.

Section 10. Any attorney admitted to practice law in the highest court of another state or the District of Columbia, and who has been actively engaged in the practice of law, judge or teacher of law for five years next preceding the filing of an application to be admitted to the Bar of this State, may be admitted to the Bar of South Carolina, without examination, on satisfactory proof that he or she is an actual resident of this state and is of good moral character. The applicant must file with the Clerk of this Court a written application giving the information required by this rule and showing the educational qualifications of the applicant, prior to being admitted to the Bar in the state in which he or she was licensed. The application must be supported by the certificate of the Clerk of the highest court of the state in

which he has practiced, showing the date of admission and his present standing; by the letter or certificate of a judge of a court of record, in which court the applicant has practiced, certifying to applicant's character and standing; and also must be supported by the certificate of three attorneys of this state certifying to his or her good moral character.

This Court reserves the right to require additional proof of character and standing; to make such investigation of the character and standing of the applicant as it sees fit and to accept or reject any application.

Attorneys from states not extending reciprocity on equal terms in this respect to attorneys licensed in this State will not be admitted without written examination.

A fee of \$30.00 to the Clerk of this Court must accompany the application, and such additional amount as is necessary to defray the cost of investigating the applicant, should the Court deem an investigation advisable.

Rule 31

Subsequent application for order previously refused

When any Justice of this Court, or any Judge of any of the Courts of this State, has declined to grant any order or writ in any case, and thereafter application for the same order or writ, or an order or writ of a similar character, is made to a Justice of this Court, it shall be incumbent upon the party, or his attorney, in his application to such Justice, to show therein the former refusal of the said order or writ, and the Justice who refused the same, and if the declination to grant the said order has been reduced to writing, the original of the order thereabout, or a certified copy of the same, shall be presented to the Justice at the time the subsequent application is made.

Rule 32

Resignations of attorneys

In the event any attorney-at-law, duly admitted to practice in the Courts of this State, shall submit his resignation as such attorney, the same will be referred by the Court to the Committee on Grievances of the South Carolina Bar Association for an investigation of the conduct as a member of the Bar of the said attorney, and for a recommendation of the said Committee as to the propriety of the acceptance of the said resignation; the said Committee to proceed in its investigation according to the provisions contained in Sections 56-153 to 56-160, both inclusive, of the Code, upon the coming in of the report of the said Committee, and not prior thereto, the Court will take such action upon the same and the resignation submitted as it shall deem proper.

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Rules and Regulations
Adopted under General and Permanent Laws
of the State of South Carolina.

FILED IN THE OFFICE OF SECRETARY OF STATE AS OF AUGUST 14, 1952.

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CODE OF LAWS OF SOUTH CAROLINA

Aeronautics Commission.

ADOPTED BY SOUTH CAROLINA AERONAUTICS COMMISSION.

Pursuant to §§ 2-55 and 2-64, S. C. Code of 1952.

1. Pilot regulations.

(Filed Secretary of State's office April 10, 1940.)

Pilots, with less than 200 hours certified time, shall not fly an aircraft, other than the model or type used in taking their primary instruction, until after they have taken three hours dual instruction under the supervision of a competent pilot on the model or type they intend to fly. Limited-commercial and private pilots, under this classification, shall, in addition to the dual instruction required above, complete two hours solo flight on the model or type aircraft they intend to fly, before carrying passengers as authorized in their certificate of competency. Both the dual and solo time required under this regulation will be certified to in the pilot's log book by the supervising pilot.

2. Landing aircraft on beach.

(Filed in Secretary of State's office August 20, 1945.)

It shall be unlawful for any aircraft to be landed or operated on any beach in South Carolina, except such areas as may be designated by the South Carolina Aeronautics Commission.

Agriculture Commissioner.

ADOPTED BY THE SOUTH CAROLINA COMMISSIONER OF AGRICULTURE.

Corn Meal and Grits Enrichment Law.

Enriched Flour and Enriched Bread Act.

Feedstuffs Law.

Milk.

Oil and Gasoline Inspection.

Seeds.

Skimmed Milk and Bleached Flour.

Warehouse Division or Warehouse System.

Weights and Measures.

Corn Meal and Grits Enrichment Law.

Pursuant to § 32-1557, S. C. Code of 1952.

(Filed Secretary of State's office September 17, 1951.)

1. Labeling:

a. All containers such as boxes, cloth and paper bags, except when repacked from bulk by retailer, and other containers for hominy grits and/or corn meal, must be labeled in accordance with the Federal Security Agency's regulations for special dietary uses, so as to carry information as to minimum daily requirements of enrichment ingredients for adults.

b. Specimen wording of label submitted below contains the above information.

ENRICHED HOMINY GRITS OR ENRICHED CORN MEAL.

"——— ounces (——— cups) of this product contain not less than the following proportions of the minimum daily requirements of Thiamin (B-1 ——%; Iron ——%; Niacin —— mgs.)

c. As provided in § 32-1552, (2), if allowable ingredients are used, the amount must be stated on label.

d. Labels shall be printed on boxes and other containers in type large enough to be easily read. Sewed-in tags may be used on bags.

2. As provided in § 32-1554 the following form or one with similar information is acceptable: "I hereby certify and declare that the —— pounds of hominy grits and/or corn meal purchased from you on this date are to be used solely in the production of corn meal or hominy grits enriched as required by this Act, or other legitimate products not covered by this Act."

RULES AND REGULATIONS

Enriched Flour and Enriched Bread Act.

Pursuant to § 32-1536, S. C. Code 1952.

(Filed Secretary of State's office September 17, 1951.)

1. Definition of White Flour:

The term "white flour" includes and shall be limited to flour made wholly from wheat which conforms to the definition and standard of identity for white flour, promulgated by the Federal Security Agency (Federal Register of May 27, 1941, page 2579).

2. Definition of Self-Rising Flour:

The term "self-rising flour" includes and shall be limited to self-rising flour which conforms to the definition and standard of identity of self-rising flour, promulgated by the Federal Security Agency (Federal Register of May 27, 1941, page 2580).

3. Exclusion of Certain Flour:

Provided, however, that special flours not used for bread and biscuit baking, such as cake, pancake, pastry flours and other specialty flours, shall be excluded.

4. Labelling:

All containers, such as cloth and paper bags, barrels, and other containers for white flour and for self-rising flour must be labelled in accordance with the Federal Security Agency's regulations for foods for special dietary uses (Federal Register November 29, 1941, Page 5925), so as to carry information as to minimum daily requirements of required ingredients for adults.

Specimen wording of label submitted below contains the above information, and either these, or similar ones, are acceptable.

ENRICHED FLOUR.

"10 ozs. of this flour contains not less than the following proportions of the minimum daily requirements of Vitamins B-1, 100%; Iron 37% and 3.75 mg. of Niacin (another B. Vitamin)."

or

"8 oz. (2 cups) contains 83% of the Vitamin B-1, and 30% of the Iron required daily as a minimum for an adult; also 3 mg. Niacin."

5. Labels shall be printed on bags, or other containers, in type large enough to be easily read.

6. Baker's Certificate:

Bakers or other commercial secondary processors purchasing flour non-enriched shall prepare an approved certificate, in triplicate. This certificate must be approved by the Commissioner of Agriculture—one copy to be furnished his office, the other copy to be retained by the purchaser, and the original to be furnished the supplier of the non-enriched flour. Said certificate may be in the form of a blanket certificate to cover all purchases from each supplier for an indefinite period of time, or a separate certificate may be furnished with each purchase order. The law does not state the form of certificate to be used; however, the following form is suggested:

Suggested Certificate.

This is to certify that the flour purchased by me, or us, from you, is to be used solely in the production of enriched flour or enriched bread, as defined in the Act of the General Assembly, "To Require the Enrichment of White Bread, White Flour and Self-rising Flour, etc."—or in the manufacture of legitimate products not covered by the provisions of this Act or rules of Administration set up by the Commissioner of Agriculture. This certificate is to remain in force until written notice of its cancellation.

7. Definition of Bread:

For the purpose of administering this Act, bread shall mean that product, in the form of loaves, obtained by baking dough consisting of flour, leavened mixture, with water and/or other liquid and with or without the addition of other edible substances.

8. Exceptions:

The provisions of this Act shall apply to what is generally known as white bread and not to such specialties as cakes, pastry, rolls, buns, crackers, raisin bread, cheese bread, banana bread, or "other special bakery products."

CODE OF LAWS OF SOUTH CAROLINA

9. Bread Labelling:

All white bread sold, or offered for sale within the State of South Carolina shall bear a label in accordance with the provisions set up by the Federal Security Agency containing information such as given for flour, and the following is suggested:

ENRICHED BREAD.

Six ounces of this bread contains not less than the following proportions of minimum daily requirements of Vitamins B-1, 37½%; Niacin (another "B" Vitamin)—1.5 mgs; Iron, 15%.

10. Applying Labels:

A label must be on each individual loaf, either printed on the wrapper or on a band around the wrapped bread, or labeled by any other practical method.

Feedstuffs Law.

Pursuant to § 3-608, S. C. Code, 1952.

(Filed Secretary of State's office May 3, 1940.)

1. Branding and Tagging.

With the exception of molasses feeds, which must have the statement printed on a tag, it is optional with the manufacturer whether the tag or package have the statement printed in black ink thereon, or upon a tag to be attached thereto. The tag is preferable for all feeds, and when used the statement must be printed clearly thereon in black ink, and the tax stamp must be affixed to the tag alongside the printed matter. Where brand and guarantee is shown on bags and on tag the tag will take precedence. The following form is provided. Tags should measure not larger than 4½ x 2½ inches, and manufacturers must furnish their own tags:

Type of Label for Mixed Feed in General:

100 lbs. net
Excelsior Dairy Feed
manufactured by (or for)
JOHN DOE FEED MILLS
Doeville, Kansas

Crude Protein, not less than	Percent
Crude Fat, not less than	Percent
Crude Fibre, not more than	Percent

Ingredients: Corn gluten feed, cottonseed meal, wheat bran, wheat shorts, ground corn, alfalfa meal and oat meal feed.

2. Stamping Small Packages.

If feed is packed in packages smaller than 25 pounds, these may be shipped in a larger container with the correct inspection stamp placed on same.

3. Adulterants.

Feeds cannot be adulterated with substances of little or no feed value, such as corn cobs, noxious weed seeds, rice hulls, rice straw, rice chaff, humus, sphagnum moss, ground cocoanut shell, peat, damaged or moldy grain, sawdust sweepings, dirt or any worthless or damaged ingredient.

4. Damaged Cereals.

Damaged whole seeds or grains or cereals under the terms of the Section 6588 of 1932 Code of Laws cannot be legally sold in South Carolina if sufficiently damaged to be unfit for food purposes, and they will be subject to seizure and destruction if offered for sale.

5. Bleached Seeds.

If any seeds or grains be bleached by chemical process for the purpose of sale in this

RULES AND REGULATIONS

State, and the package containing it or in which it is offered for sale is not plainly marked showing the same, it will be considered a violation of the laws of South Carolina.

6. Cracked Corn.

Cracked Corn is considered a commercial feed and must be tagged and stamped in accordance with regulations of the commercial feed law. Cracked corn must meet standard fixed for Corn Chop.

7. Wheat Bran and Screenings.

When wheat bran and screenings are mixed, the mixture shall be branded "Wheat Bran and Screenings," and the word "Screenings" shall appear in the same size type as the words "Wheat Bran." This regulation applies to all pure wheat products.

9. Oats and Barley; Screenings.

If any substance, such as chaff, screenings, damaged, faulty or unlike seeds or grains or foreign materials be mixed with or added to seeds or grains as an adulterant, and not plainly marked on the package containing it, or in which it is offered for sale, showing the true composition of the mixture—will be considered a violation of the law; e. g., if oats be mixed with screenings and shrunken seeds, or barley the proper method of branding would be "Oats and Screenings," "Oats and Barley."

9. Mixed Cereals.

Any cereal containing 5 per cent. or more of seeds other than as represented, must pay the inspection tax and in every way comply with requirements of Sections 6587 to 6600 and Sections 1367 to 1370 governing the sale of feedstuffs.

10. Poisonous Weed Seed.

The sale of poultry and cattle feeds which contain poisonous weed seeds in appreciable quantities, such as corn cockle and jimson weed (Jamestown weed) are forbidden.

11. Mixed Bran.

When corn bran is mixed with wheat bran the mixture shall not be branded "Bran," but shall be branded "Mixed Bran," or under a trade name, and so registered with the Department of Agriculture.

12. Mixed Bran and Middlings.

When wheat bran is mixed with corn bran, and wheat middlings, the mixture shall not be branded "Bran and Middlings" or "Bran and Middlings Mixed," but shall be branded "Mixed Feed," or "Feed" or under some trade name, and so registered with the Department of Agriculture.

13. Corn Bran and Middlings.

When corn bran is mixed with wheat middlings, the mixture shall not be branded "Middlings" or "Middlings and Bran," but shall be branded "Mixed Feed," or "Feed," or under some trade name, and so registered with the Department of Agriculture.

14. Velvet Bean Meal.

The term "Velvet Bean Meal" shall be used only when the velvet beans are ground without the pod. When velvet beans and the pods are ground together the product must be branded as "Velvet Bean Feed."

15. Corn Meal, Grits and Hominy.

All corn meal, grits or hominy offered for sale or sold for animal food are subject to inspection and inspection tax and must comply in every respect to the rules and regulations governing the sale of such products. All corn meal and grits or hominy as such sold for human food will not be considered commercial feedstuffs and liable to tax and other regulations as to commercial feedstuffs, except when proved upon inspection to have been made from damaged wholegrain corn, in which case the manufacturer, jobber or dealer will be dealt with in accordance with the terms of the law. Inspectors will draw samples from time to time of corn meal, hominy or grits in the open market for examination. All table meal, grits or hominy for human food purposes will be sold as heretofore under the provisions of the weights and measures law and other laws relating to the sale of corn meal in South Carolina, without the tax, but if sold for animal foods then all requirements of the Commercial Feedstuffs Law must be complied with.

(Following rules filed Secretary of State's office September 17, 1951.)

CODE OF LAWS OF SOUTH CAROLINA

16. All Registrations for Fish Meal filed with the Department of Agriculture must show in the ingredients the kind of fish from which the meal is made.

17. Feeds sold under the brand name of Fine Feed and Mill Feed may include all wheat products or may contain wheat and corn products mixed.

18. Feed for mixing purposes sold in bags need not be stamped with inspection stamps or included in reports of feed shipments under our reporting system if such feed is tagged to show the following: "For Mixing Purposes". However, if feed in bags tagged "For Mixing Purposes" is found on the retail market of this state without inspection stamps, it will be subject to seizure and confiscation.

19. Where Vitamin B-12 Supplement or Antibiotic Feed Supplement, or both, are used in a mixed feed, the labels used must show either "Vitamin B-12 Supplement", or "Antibiotic Feed Supplement", or both. The ANIMAL PROTEIN FACTOR will be known as Vitamin B-12 Supplement.

20. Standards for the principle types of feeds will be adopted and published in January of each year and where no standards are fixed, manufacturers are required to make their own guarantees and live up to same.

21. All mixtures containing mineral ingredients generally regarded as dietary factors essential for the normal nutrition of animals, which are sold or represented for the primary purpose of supplying these minerals as additions to rations in which these same mineral factors may be deficient, are classified as mineral feeds. Such mineral feeds must be registered with this Department under the Commercial Feedstuffs Law.

22. All other preparations which are sold or represented primarily for the cure, mitigation or prevention of disease are classified as drugs, medicines or specifics. Such preparations must be registered with this Department under the Condimental Feed Law.

23. It will be permissible to add Calcium Carbonate (Pure Limestone), not to exceed 5%, to cotton seed meal, replacing the hull fiber removed. Registration must show guarantee of Calcium Carbonate in brand name.

24. It will be permissible to add Calcium Carbonate (Pure Limestone) not to exceed 5% and/or Peanut Hull Brand in sufficient quantity to maintain prime cotton seed meal with a minimum of 36% protein content. The brand name of this product must carry statement of Calcium Carbonate or Peanut Hull Brand if used.

Milk.

Pursuant to § 32-1609.7, S. C. Code of 1952.

(Filed Secretary State's office December 21, 1951.)

Tests.

1. The Babcock Test is declared the official method to be used in compliance with this Act.

2. The "Manual for Babcock Testing of Milk and Cream" prepared by the Dairy Department of the Clemson Agricultural College September, 1951, must be used as the guide in making this test.

3. A record of each test or group of tests must be dated and recorded by the licensed tester. Records must be kept on file for at least six months. Preserved composite samples that show mold growth, evidence of churning or other signs of improper care during the sampling period must not be used for testing. In such cases, take approximately 150 milliliters of a well-mixed sample of fresh milk from that patron whose composite sample is deemed unfit and use it as a basis for payment.

Weighing.

1. Scales must always be properly balanced, kept in good working condition, and easily readable. All measuring and weighing equipment used in the plant must comply with the requirements of the South Carolina Weights and Measures Law.

2. The weight of milk and/or cream must be recorded before emptying the weigh tank.

Equipment and supplies.

1. All glassware, equipment and supplies for Babcock Testing must meet the U. S. Bureau of Standards, specifications as outlined in the "Manual for Babcock Testing of Milk and

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Cream" as prepared by the Dairy Department of Clemson Agricultural College September 1951.

Sampling milk and cream.

1. Milk and/or cream to be tested must be thoroughly mixed before sampling.
2. When daily tests of each delivery are made, the sample must contain not less than 60 milliliters. The remaining portion of the daily sample must be held at least 24 hours under refrigeration and in condition for re-testing.
3. Unless daily tests are made, composite samples are required. Composite samples must consist of aliquot (proportional) parts of milk of several deliveries from the same patron, kept by the use of a preservative. In no case shall the aliquot part be less than 10 milliliters from each delivery.
4. Preserved composite milk samples must be stored during sampling period in a cabinet or some other storage place that is refrigerated to maintain a temperature at 35 to 45 degrees Fahrenheit. It will be the responsibility of the licensed sampler to keep unauthorized persons from tampering with samples.
5. Composite samples must be held not less than 7 days or more than 16 days before being tested. Samples must be held for a maximum 7 days beyond the sampling period to permit check testing by inspectors.
6. Composite samples to be tested for milk fat must be tested not later than the third day after the end of the sampling period.

Sample bottles.

1. Composite samples must be put in approved airtight, round bottles, which must be clean, dry and free from cracks or chips. The sample bottles must have sloped shoulders with the neck not less than $1\frac{1}{4}$ " in diameter and fitted with a tight rubber stopper permanently attached to the bottle.
2. Composite milk sample bottles must not be less than 8 ounces in capacity and must be etched for proper identification. Each composite sample bottle must be clearly identified as to a patron's name or number.

Oil and Gasoline Inspection.

Pursuant to § 66-415, S. C. Code 1952.

(Filed Secretary of State's office September 17, 1951.)

1. Standard for gasoline.

Distillate of 100 C. C.

Initial Pt. not more than 55° C. or 131° F.

Dist. to 105° C. or 221° F. not less than 20%

Dist. to 140° C. or 284° F. not less than 50%

Dist. to 200° C. or 392° F. not less than 90%

Dist. to 225° C. or 437° F. not less than 95%

End pt. must not be higher than 225° C. or 437° F.

Corrosion Test must be Negative.

2. Standard for kerosene.

Flash Point not less than 100° F. Elliott Closed Cup.

Not more than 6% Residue @ 300° C.

Photometric tests of illuminating oils must show a steady flame of good quality and good illuminating power.

3. Standard for fuel oil.

All petroleum or petroleum products (fuel oil or heating oil) to be used for heating purposes shall meet the following standard:

- a. The flash point shall not be less than 100° Fahrenheit, as tested by the Elliott method closed cup.
- b. Shall be free from water, suspended matter and other impurities.

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Seeds.

Pursuant to § 3-402, S. C. Code of 1952.

(Filed Secretary of State's office September 17, 1951.)

1. Standard for Agricultural Seeds.

All agricultural seeds except crotalaria and Dallis grass shall have a standard germination of 75%. Agricultural seeds showing a germination less than 75% and above 49% shall be marked "Below Standard in Germination"; and agricultural seeds showing less than 50% germination cannot be sold for planting purposes in South Carolina. Hard seed of legumes may be included in the percentage of these standards.
Exception:

(a) The germination standard for crotalaria shall be 65%. Crotalaria showing less than 65% and above 39% in germination must be labeled "Below Standard in Germination". Crotalaria showing less than 40% germination cannot be sold in South Carolina. Hard seed crotalaria may be included in the percentage of these standards.

(b) The germination standard for Dallis grass shall be 35%. Dallis grass showing less than 35% and above 19% in germination must be labeled "Below Standard in Germination". Dallis grass showing less than 20% germination cannot be sold in South Carolina.

2. Noxious Weeds.

Noxious weeds shall be seeds or bulbs of the following:

		Single Limitations
Bindweeds	Convolvulus Spp.	Prohibited
Nut Grass	Cyperus Rotundus	Prohibited
Wild Onions	Allium Spp.	27 per lb.
Johnson Grass	Sorghum Halepense	100 per lb.
Dodders	Cuscuta Spp.	200 per lb.
Blue Weed	Helianthus Ciliaris	200 per lb.
Bermuda Grass	Cynodon Dactylon	500 per lb.
Bracted Plantain	Plantago Aristata	500 per lb.
Buckhorn Plantain	Plantago Lanceolata	500 per lb.
Cheats or Chess	Bromus Secalinus	500 per lb.
Corn Cockle	Agrostemma Githago	500 per lb.
Docks	Rumex Species	500 per lb.
Darnel	Lolium Temulentum	500 per lb.
Horsenettle & Night Shades	Solanum Spp.	500 per lb.
Red Rice	Oryza Sativa	500 per lb.
Sheep Sorrel	Rumex Acetosella	500 per lb.
Canada Thistle	Cirsium Arvense	100 per lb.
Quack Grass	Agropyron Repens	100 per lb.
Russian Knapweed	Centaurea Picris	100 per lb.

The single limitation listed above is the maximum number allowable for that weed with not over 500 total noxious weed seeds singly or collectively in any combination.

The following additional seed incorporated in the law as noxious will, until further notice, be considered passive noxious weeds in order to secure efficient enforcement of the law. Agricultural seed, unless they contain these seed in excessive amount which interfere with normal crop production, will not be withheld from sale.

Black Mustard (*Brassica Nigra*).

Wild Mustard (*Brassica Arvensis*).

Wild Oats (*Avena Fatua*).

The rate of occurrence of all noxious weeds present shall be listed on the tag or label in name and number per pound of seed.

3. Prohibited.

Agricultural seeds will be prohibited from sale when such seeds contain more than three per cent (3%) by weight of all weed seed.

4. Standard Germination for Vegetable Seeds.

(a) All vegetable seeds shall show the percentage of germination and the minimum for "Standard Germination" for vegetable seeds shall be as follows:

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Kind	Percentage	Kind	Percentage
Artichokes	60%	Kohlrabi	75%
Asparagus	70%	Leek	60%
Beans, Asparagus	75%	Lettuce	80%
Beans (except Lima)	75%	Muskmelon	75%
Beans, Lima	70%	Mustard	75%
Beans, Runner	75%	Okra	50%
Beets	65%	Onion	70%
Broccoli	75%	Parsley	60%
Brussels Sprouts	70%	Parsnip	60%
Cabbage	75%	Peas	80%
Cardoon	60%	Pepper	55%
Carrots	55%	Pumpkin	75%
Cauliflower	75%	Radish	75%
Celery or Celeriac	55%	Rhubarb	60%
Chicory	65%	Rutabaga	75%
Citron	65%	Salsify	75%
Collards	80%	Sorrel	60%
Corn	75%	Soybean	75%
Cowpeas	75%	Spinach (except N. Z.)	60%
Cress, Garden	40%	Spinach, N. Z.	40%
Cress, Water	35%	Squash	75%
Cucumber	80%	Swiss Chard	65%
Dandelion	45%	Tomato	75%
Eggplant	60%	Tomato, husk	50%
Endive	70%	Turnip	80%
Fetticus (corn salad)	70%	Watermelon	70%
Kale	75%		

(b) Vegetable seeds which have a germination percentage less than the standard and not less than 50% of the standard shall have the words "Below Standard in Germination" clearly shown in a conspicuous place on the label or the face of the container in type not smaller than 8 point. The seed shall also be labeled to show the percentage of germination, the percentage of purity and the variety.

(c) Vegetable seeds showing less than 50% of the standard germination cannot be sold in South Carolina.

(d) Flower seeds must show the percentage of germination, the percentage of purity, and the variety.

5. Tolerances.

The word "approximate" as used in the law is hereby defined as a slight variation occurring between the analysis given on the tag or label and that found upon test of the official samples drawn therefrom. Seed shall be considered misbranded within the meaning of the law when the difference in the purity or germination analysis between that guaranteed and that found exceeds the officially recognized tolerances for seed testing.

6. Labeling.

(a) All agricultural, vegetable and flower seeds offered or exposed for sale in South Carolina shall bear a standard tag or label except seed sold across the counter from a bin or container when such a bin or container carries a standard tag or label in full view of the purchaser.

(b) The vendor of seed will be held responsible for declaring the variety of all seed sold or exposed for sale.

7. Inconsistent Statements.

No statement will be permitted on the tag or container which conflicts with the requirements of the standard tag.

8. Advertisement.

The name of the South Carolina Department of Agriculture must not be used for advertising purposes in connection with reports on samples.

9. Seed for Cleaning or Processing.

Seed transported to a cleaning or processing establishment shall bear a tag stating "Seed for Cleaning or Processing".

10. Certified Seed.

Certified seeds or registered seeds shall mean seed that have been produced in accordance with the procedures and in compliance with the rules and regulations of an officially recognized seed certifying agency.

11. Mixtures.

A mixture means seed consisting of more than one kind or variety, each present in excess of five per cent (5%) of the whole.

12. Origin.

The origin shall be required only when known.

13. Date of Test.

All seed sold, offered or exposed for sale in this State shall show on the label the month and year in which the germination test was completed.

No more than nine (9) calendar months shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

14. Method of Testing.

The methods of testing seed shall be as near as practical those adopted by the Association of Official Seed Analysts of North America.

15. Sampling.

The manner of sampling shall be as follows:

(a) Bulk.—Bulk seeds or screenings shall be sampled by inserting a long probe or thrusting the hand into the bulk as circumstances require in at least seven uniformly distributed parts of the quantity being sampled.

(b) Bags.—In quantities of five bags or less each bag shall be sampled, in quantities of more than five bags at least every fifth bag but not less than five bags shall be sampled. Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

(c) Packets.—In sampling seed in packets, entire unopened packets shall be taken.

16. Size of sample.

The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

(a) Two ounces of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these.

(b) Five ounces of red or crimson clover, alfalfa, rye grasses, brome grasses, millet, flax, rape, lespedeza, or seeds of similar size.

(c) One pound of Sudan grass, sorghum, proso, hemp, or seeds of similar size.

(d) Two pounds of cereals, vetches or seeds of similar size or larger.

17. Variety.

When submitting samples for test the kind and variety should be given when known.

18. Information on Tags.

(a) The standard tag for agricultural seeds shall show the following information:

Name of seed	Lot Number
Pure Seed%	Germination%
Insert Matter%	Hard Seed%
Weed Seed%	Date of Test
Other crop seed%	Net weight
Origin	
Name and number of noxious weeds per pound	
Seedsman	
Address	

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(b) The standard tag for vegetable and flower seeds shall show the following information:

Name and variety of seed	Lot No.
Pure seed%	Germination%
Date of test	Net weight
Name and number of noxious weeds per pound	
Seedsman	
Address	

Rules and regulations effective
September 1, 1951.

Skimmed Milk and Bleached Flour.

Pursuant to § 32-1525, S. C. Code of 1952.

(Filed secretary state's office May 3, 1940.)

Regulation 1. The sale of condensed skimmed milk is allowed, but it shall be unlawful to sell the said condensed skimmed milk except under the following regulations: In addition to the compliance with all existing laws, the said condensed skimmed milk to be sold in packages or containers, containing not less than one gallon, which packages or containers shall be hermetically sealed at the time of sale; also that at the stores, groceries, shops or places where such condensed skimmed milk is sold, a sign printed or painted in black letters on white background, and on which the letters are at least five (5) inches high and worded as follows, must be displayed.

CONDENSED SKIMMED MILK SHOULD NOT BE FED TO BABIES, CHILDREN OR INVALIDS. IT IS LACKING IN FOOD VALUE.

Regulation 2. All flour, that has been bleached by any of the various processes, offered for sale in the State of South Carolina after July 1, 1912, must be clearly and distinctly labeled in letters of not less than $\frac{1}{2}$ " in height as follows:

"BLEACHED"

The said labels should appear on each and every sack containing bleached product and shall be placed immediately above or below the name of the product.

Regulation 3. The name of manufacturer or producer, or person responsible for the food product and the place where manufactured must be given on the label. The name and address of bottler should appear on bottles, showing either by whom or for whom product is bottled.

Warehouse Division or Warehouse System.

Pursuant to § 69-104, S. C. Code, 1952.

(Filed Secretary of State's office September 17, 1951.)

Definitions:

1. "Commissioner" means the South Carolina Commissioner of Agriculture.
2. "Inspector" means the field representative duly appointed by the Commissioner and bonded for faithful performance of duty.
3. "Manager" means the person appointed by the Commissioner to operate a warehouse unit.
4. "Warehouse" means an individual unit in the System.
5. "Non-perishable farm product" means any seed, grain, or other product of agricultural endeavor which by its nature and low moisture content may be stored in a conventional type warehouse for a period of at least twelve (12) months without deteriorating, not having been manufactured or processed in any way other than harvesting, thrashing, shelling, ginning, curing, drying and bagging. Provided that this definition shall not apply to farm products processed by South Carolina canneries when same are offered for deposit by the grower or processor. Provided, further that this definition shall not apply to livestock and poultry feeds when same comply with the South Carolina commercial

feedstuff law, are properly bagged, tagged, and stacked and offered for deposit by the manufacturer, only.

This definition makes ineligible for storage in any State Warehouse such items as poultry, beef, pork, fish, shrimp, crab, oysters and products of the above mentioned items, regardless of whether the same is fresh, canned or frozen.

This definition also makes ineligible for storage in any State Warehouse any feed stuff ingredients other than those which strictly conform to the definition.

6. "Commodity" means cotton, crates, cartons and canning supplies, fertilizer and fertilizer material, insecticides and equipment for application of same, bagging and ties for covering lint cotton, alcoholic liquors as defined by the S. C. Tax Commission and non-perishable farm products as defined by definition no. 5, or which may hereafter be included in the said definition.

Inspectors.

7. Districts arranged according to density of warehouses rather than by geographical lines shall be assigned to an adequate number of inspectors for the proper inspection of said warehouses and the commodities stored therein.

8. Each inspector shall make a thorough study of the statutes, rules and regulations relating to the administration of State Warehouses. He shall also acquaint himself with the duties and responsibilities imposed on him by law.

9. Each inspector shall inspect the warehouses in his district as often as he thinks necessary, but he shall inspect every warehouse at least once every three months. He shall promptly render a detailed written report of inspections, inventories and physical condition of same to the Director of the Warehouse Division who shall analyze it and report any discrepancies to the Commissioner. The Director shall keep a record of the inspection dates of each warehouse which shall be available to the Commissioner at any time.

10. When an inspector has reason to believe that the moisture content of grain on storage is too high for safe keeping, he shall take a sample of same and submit it to the Department of Agriculture laboratory for analysis and opinion. If, in the opinion of the said laboratory the moisture of said grain is too high for safe keeping, the inspector shall advise the manager of said warehouse to recall the receipts issued therefor and send them to the office of the Commissioner for cancellation.

11. When an inspector has reason to believe that grain classified as seed does not come up to the standard required for such seed, he shall take a sample of same and submit it to the Department of Agriculture for analysis and opinion. If, in the opinion of the said laboratory the sample is below the standard for seed, the inspector shall advise the manager of said warehouse to recall the receipts issued therefor and send them to the office of the Commissioner for cancellation.

12. When an application for license to operate a warehouse in the State System is received, it shall be referred to the appropriate inspector who shall, after investigation, make a positive YES or NO recommendation to the Commissioner in writing. He shall check then and regularly thereafter with local banks and other sources for information concerning the integrity, business experience and financial responsibility of the manager and owner. He shall constantly be alert to infractions by managers and immediately report in writing any violations to the Commissioner.

Managers.

13. No person shall be commissioned as the manager of any warehouse, until he shall have given bond prescribed by the Commissioner and shall have paid the fee required; which shall always be for at least one year in advance.

14. No manager or agent shall receive for storage in any warehouse any commodity upon which any mortgage or lien exists unless the owner and holder of said mortgage or lien shall agree to the same in writing, or shall release the same from the effect of lien or mortgage for the purpose of storage; in such case the receipt for the Commodity so stored shall be transferred in writing thereon to the owner and holder of the lien or mortgage by the owner of the commodity in the presence of manager or agent who shall sign such transfer as to witness before the delivery of said receipt.

15. It shall be the duty of every manager appointed by the Commissioner to tag or properly mark every commodity stored in the warehouse he represents, so that the same can be easily identified. He shall see to it that same is properly weighed and graded. He shall fill out all the necessary receipts and enter same upon the books furnished him for this purpose. He shall forward a copy of same to the Commissioner by depositing

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in his post office on the day the transaction is made. He shall furnish such other certificates and proofs as to weighing and grading as the Commissioner shall require.

16. If authorized by agreement or custom, a manager may mingle fungible commodities with other commodities of the same kind and grade. In such case the various depositors of the mingled commodities shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. The manager shall be severally liable to each depositor for the care and delivery of his share of such mass to the same extent and under the same circumstances as if the commodities had been kept separate.

17. Commodities must be stored in such manner as will permit rapid and accurate count. Commodities in bags shall be clearly identified and of equal weight. Cartons shall be of uniform content quantity. Commodities in bulk shall be stored in bins of convenient size for measuring and calculation of quantity. No commodity shall be left lying in or around any warehouse in a promiscuous and careless manner.

18. No person shall be allowed to loiter around any warehouse and as far as possible the manager shall prevent matches or fire lighting devices from being carried on the premises; and no fireworks of any kind shall be allowed about the warehouse, nor shall any intoxicated person be permitted on the grounds.

19. All bills presented by the Commissioner shall be paid monthly. The bond of the manager and a lien against the goods on storage shall be responsible for the charges dating from the issuance of the receipt.

20. No manager of any warehouse shall make partial delivery of commodities listed on a warehouse receipt.

21. The manager appointed to represent the Commissioner at any warehouse storing cotton shall adopt the U. S. Government Standard of grades and staple to govern the grade and staple entered on each receipt and he shall be responsible for same; provided the grade and staple may be omitted from the receipt at the request of the depositor.

22. It shall be the duty of the manager of every warehouse to look carefully after the physical condition of the house in which commodities evidenced by state receipts are stored so that none of the commodities will become damaged (by leaky roofs, by overflow of water or by excessive moisture, etc.) All managers will be held responsible for the condition, weight and grade of the commodity while in their charge and for delivery of same upon presentation of receipts. Provided; the weights shall not be guaranteed against fluctuations arising from climatic conditions and the grades are subject to such changes as are effected by the nature of such product during the lapse of time.

23. No manager shall allow a warehouse to remain open or doors unlocked except when receiving or delivering commodities from the warehouse and no person or persons shall have access to a warehouse except when accompanied by the manager.

Warehouses:

24. No building shall be operated as a State Warehouse except upon a survey duly filled out by the person in charge of the same, showing the location, nearest post office, the County and State, and giving the construction, size, approximate capacity, together with any exposures and the nature of same.

25. No warehouse shall be operated as a State Warehouse until the same shall have been leased to the Commissioner in writing by the owner thereof, for a term of at least one year and for such further length of time as it shall be operated as a State Warehouse. And the lease for same shall carry with it the right of the owner to such approaches as may be necessary for the operation of same as a warehouse both for ingress and egress.

26. No warehouse shall be operated as a State Warehouse except by the Commissioner or his duly appointed and commissioned manager; and no person shall be appointed manager except upon written application for appointment and bond; said person must in addition furnish at least one indemnitor.

27. Barrels of water and buckets for fire protection shall be carefully maintained. Sufficient "no smoking" signs shall be displayed and the premises generally shall be kept clean and free of trash and combustible matter so that the building and commodity stored therein shall be protected from outside fire.

28. No commodity shall be moved from one warehouse to another without permission of the Commissioner.

Receipts.

29. All receipts for commodities stored in a State Warehouse shall be made out with

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pen and ink or indelible pencil and shall be signed by the local manager with pen and ink, indelible pencil, or with a mechanical device approved by the Commissioner. Same shall be forwarded to the Commissioner for investigation, approval and issuance.

30. All receipts together with copies forwarded to the Commissioner for investigation and issuance shall be accompanied in the same package or envelope by a daily report of the identical commodity covered by the receipts with a full description of same, and the totals fully carried out, and with the date and signature of the manager.

31. No commodity shall be delivered from any warehouse until the receipt covering the same shall be presented to the manager of the warehouse and until all charges against the same shall have been paid and all receipts for commodities so delivered shall at once be forwarded by the manager to the Commissioner for cancellation, same being marked for such purpose.

32. Commodities which are attractive to rats and insects shall have written or stamped on the receipt issued therefor the following: "Not responsible for ramage or insect damage". Commodities which are classified as seed shall have written or stamped on the receipt issued therefor the following: "Germination and purity not guaranteed". Provided; that this regulation shall not apply to receipts issued for commodities stored in elevators or warehouses approved as depositories for commodities eligible for U. S. Government loans.

33. All commodities, except cotton, for which a receipt is issued must be called for within one year, all charges paid and the receipt cancelled. However, the manager may, in his discretion, accept for re-deposit the same commodities, issuing a new receipt for same.

Weights and Measures.

Pursuant to § 66-163, S. C. Code 1952.

(Filed Secretary of State's office September 17, 1951.)

1. Vegetables, fruits, meats, or any commodity, package, article or thing sold by weight or measure, shall be the true and correct weight or measure at such time as sale and delivery is made.

2. The use of cylindrical bottomless dry measures in this State is prohibited and is a violation of the law and subject to penalties provided thereof.

3. All persons, firms or corporations, engaged in the sale of coal or coke in the State of South Carolina, shall be required to weigh all trucks, wagons, or other vehicles used by them in the delivery of such products, once or more each day.

The driver of any vehicle delivering coal or coke shall have in his possession, to be delivered to the purchaser, a delivery slip showing the gross weight of the load, the weight of the truck or vehicle, and the net weight of product to be delivered.

Upon demand of an authorized representative of the Department of Agriculture a driver of any vehicle delivering coal or coke shall be required to proceed to any scale designated by the representative for the purpose of re-weighing the load.

4. All honey which has been strained and placed in containers must carry statement to show the net weight of contents when offered for sale in this State.

All honey in the comb, not in the original frame but in other container, must show the net weight of contents when offered for sale in this State.

This regulation does not apply to the sale of honey in the comb in the original frame.

5. The weights of all baskets used in tobacco auction warehouses in South Carolina, shall be established by weighing 100 baskets, picked at random, and divided by 100. No basket shall be used in a tobacco warehouse which deviates from the established average weight by a weight in excess of one pound over or under. Any and every basket in said warehouse which does not conform to this requirement shall be removed from the premises or destroyed by the operators of the warehouse. Provided, however, any baskets under weight may have additional weight attached thereto in a permanent manner by having the additional weight bolted to the basket in order to comply with the weight as determined above. Boards or planks nailed to the basket in an effort to comply with the required weight shall not be allowed.

The said average basket weight shall be posted on the scale or the scale house in a plain and conspicuous place.

All warehouse trucks shall be of the same weight, and any weight needed to bring about this result shall be permanently attached by a bolt, or added weight may be placed in a box attached to the truck, provided the box is so constructed that weights may not be easily removed.

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Agricultural Marketing Commission.

ADOPTED BY STATE AGRICULTURAL MARKETING COMMISSION
OF SOUTH CAROLINA.

OPERATION OF THE COLUMBIA STATE FARMERS MARKET.

Pursuant to § 3-208, S. C. Code of 1952.

(Filed Secretary of State's office June 11, 1952.)

Section I. The Market Manager or his Agent shall have the supervision and general control of the Market and the streets and alleys immediately adjoining, and shall collect all fees, rents, etc., and deliver to each lessee, buyer, or seller, as provided for herein, the required receipt or ticket for use while doing business on the Market grounds.

Section II. No person shall deface or damage the buildings, loading platforms, packing sheds, streets, or any other physical equipment of said Market other than that actually done while engaged in business.

Section III. It shall be unlawful for any person to sell or offer for sale on said Market until he or she has paid the required fee or rent, or has made satisfactory arrangements with Market Manager or his assistant.

Section IV. The Market Manager or duly authorized agent shall have the authority to direct the arrangement and movement of all vehicles on the Market.

Section V. Stall and parking space shall be rented either by the month or by the day. The rent shall be fixed by the Market Commission.

Section VI. No person renting a stall space on said Market shall sell, sublet or assign the same, or any part thereof, or shall use same for any purpose other than loading, unloading, displaying and selling farm products without the consent or approval of the Market Manager.

Section VII. Sharp and dishonest practices carried on at the Market will be punished by revocation of permit to sell on the Market.

Section VIII. False packs are prohibited.

Section IX. The use of profane, abusive, or discourteous language on the Market is prohibited, and is punishable by expulsion from the Market.

Section X. The Market Manager, or his agent, shall have the authority to remove from the Market any person gambling or under the influence of intoxicants, or who is disorderly in his conduct.

Section XI. No marketeer or vendor shall do any act or use any language, intended thereby to insult another tenant or customer or to intimidate a shopper into purchasing his produce, or shall they attempt to fix the prices of produce of any farmer, or other vendor, or merchant, but every person shall sell his or her produce at whatever price they may adopt, unmolested.

Section XII. Tenants, vendors or marketeers who circulate false reports of stories tending to upset, destroy or disturb the operation of the Market, or that may cause, upset or damage to other tenants in loss of prices, shall be subject to expulsion from the Market.

Section XIII. Any user of space on the Market, either under roof or in the open, must keep his immediate premises reasonably clean, sanitary and orderly. The Market Manager or his Agent shall have the right to remove immediately from the Market grounds, any person violating this section.

Section XIV. All warehouse units must be kept in continuous operation with the exception of the months of August and September. When warehouse units are closed or not handling a normal line of produce for a period of fifteen (15) days, the Market Manager shall issue a warning to the lessee in writing. If the lessee does not show in

CODE OF LAWS OF SOUTH CAROLINA

writing sufficient reasons for not utilizing said warehouse space within fifteen (15) days from the date the warning is issued, the State Market Commission shall immediately cancel the lease of the lessee.

Section XV. Any person, firm or corporation desiring to cancel any lease with the State Marketing Commission must do so in writing. Such statement must be given to the Market Manager and include all information such as investment in permanent installations or the amount of money expected for remuneration of such installation.

Section XVI. Any person, firm, or corporation desiring to lease warehouse units must file with the Market Manager a written request with the following information: name of person, partners or firm; products to be handled; number of years in produce business; name of the bank used. A deposit of three (3) months rent in advance must accompany the request for single units or one-half units. The amount of the deposit required for more than one unit shall be determined by the Market Commission. The Market Commission shall have the right to reject any and all requests. When requests are rejected, any deposit will be promptly refunded.

Section XVII. Tenants occupying space on a monthly basis are not allowed to rent any space at another location on the Market on a monthly basis except by special permission from the State Marketing Commission.

Section XVIII. Shed stalls that become empty of products for sale may be rented to other sellers.

Section XIX. All platforms, aisles and Walkways must not be blocked at any time.

Section XX. Buyers must not approach any seller of produce until the seller has parked his vehicle on the Market grounds.

Section XXI. Sellers on the Market must not approach a buyer for the purpose of making a sale while said buyer is in conference with another seller.

Section XXII. All State and Federal Laws must be observed.

Section XXIII. The Market Manager and all other employees of the said Market shall not be interested either directly or indirectly in the purchasing, buying, or selling of any products sold on said Market.

Section XXIV. The Market or any of its employees shall not be responsible for any loss through theft or otherwise of products or any private property on the Market. The Market will not be responsible for personal injuries or damage to private property.

Section XXV. In case of violation of any of these rules and regulations, the Market Manager may revoke any privilege issued to any person under the terms of the rules and regulations and such revocation is for immediate effect. Any person who has been or who has had such privilege revoked shall be barred from the Market until he shall be reinstated. Any person whose privilege has been revoked by the Market Manager may appeal therefrom to the Market Commission. Said appeal must be made in writing within seventy-two (72) hours after the revocation and such appeal shall set forth in a concise manner the cause of the revocation and the reason for appealing. The Market Commission shall fix a time for hearing not less than one day or more than three days after the appeal has been filed. After hearing such an appeal the Market Commission may affirm the revocation or reinstate the applicant and action of the Market Commission shall be conclusive and final.

Section XXVI. The foregoing rules and regulations are subject to change at any time upon the discretion of the Marketing Commission, and the posting of the said change. Rules enforced under § 3-214, S. C. Code of 1952.

RULES AND REGULATIONS

Bank Control, State Board of.

ADOPTED BY SOUTH CAROLINA STATE BOARD OF BANK CONTROL.

Pursuant to § 8-56, S. C. Code of 1952.

(Filed Secretary of State's office April 22, 1937, except as otherwise stated.)

R-4A. The following regulation is promulgated as to limitations and restrictions on the purchase and sale of investment securities for the bank's own account, supplemental to the specific limitations and restrictions of existing statutes:

(1) Except as hereinafter provided or otherwise permitted by law no bank or banking institution shall purchase for its own account any shares of stock in any corporation.

(2) The purchase of securities which are in default, either as to principal or interest, is prohibited.

(3) Purchase of an "investment security" at a price exceeding par is prohibited, unless the bank shall:

(a) Provide for the regular amortization of the premium paid, so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or

(b) Set up a reserve account in order to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under (a) above, or

(c) Charge such premium to undivided profits account or reserve account of said bank at the time of purchase.

(4) Purchase of securities convertible into stock at the option of the issuer is prohibited.

(5) Any purchase of securities under repurchase agreement is deemed to be a "loan" and is to be so treated and classified and is hereby made subject to all laws, rules and regulations governing loans and specifically as to Section 7869 of the Code of 1932. [§§ 8-225 to 8-227 S. C. Code of 1952.]

(6) Any sale of securities under repurchase agreement is deemed to be "money borrowed" and is to be so treated and classified.

EXCEPTION.

The restrictions and limitations of these regulations do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avert an apprehended loss in connection with a debt previously contracted.

R-4B. The following regulation is promulgated as to limitations and restrictions on the borrowing of money by building and loan associations operating under the authority and control of said state board of bank control:

"No State chartered building and loan association in South Carolina shall borrow money without first securing approval in writing of the state board of bank control."

R-4C. The following rule and regulation requiring approval of security purchases by the respective boards of directors of banks, banking institutions and cash depositories is hereby promulgated:

"Any bank, banking institution or cash depository operating under the supervision and control of the state board of bank control contemplating the purchase of securities shall either (a) first secure the approval and authorization of its boards of directors for such purchase or (b) the purchase of such securities shall be approved and confirmed by the board of directors of the institution within 30 days after purchase; such authorization or confirmation to be noted in the minutes of the meeting and signed by the directors present."

R-4D. The following regulation is promulgated as to limitations and restrictions on the payment of dividends to stockholders supplemental to the specific limitations and restrictions of existing statutes:

"Any State bank operating under the supervision of the State Board of Bank Control contemplating the payment of a dividend shall first certify to the Chief Bank Examiner that the proposed dividend has been earned during the period for which it is proposed to be paid, and second shall secure the approval in writing of the Board of Bank Control before paying the same."

R-4E. The following rule and regulation is promulgated as to investment of surplus, whether earned or paid-in, and undivided profits of cash depositories:

CODE OF LAWS OF SOUTH CAROLINA

Any cash depository may invest or loan only its surplus, whether earned or paid-in, and undivided profits in any such loans and any such investments as are permitted by existing statutes for duly chartered State banks, and in making any such loans or investments shall be subject to the same rules, regulations, and statutes as apply to loans and investments by such banks.

R-4F. The following rule and regulation is promulgated as to the manner of handling and filing insurance (burglary, robbery, etc.), and fidelity bond protection of cash depositories:

All insurance (burglary, robbery, etc.), and fidelity bond policies now held by cash depositories, except fire insurance policies which are specifically exempted from the provisions of this rule and regulation, together with all additions to or renewals of same, shall be filed with the examining department of the state board of bank control, and the chief bank examiner is authorized and directed to execute and issue to each cash depository proper receipts therefor. (This rule filed Secretary State's office May 18, 1937.)

R-4G. Limitations and restrictions on loans secured by mortgages of real estate made by banks and banking institutions (including Cash Depositories) operating under the supervision of State Board of Bank Control:

Except as hereinafter provided no bank or banking institution shall make any loan or advance of credit of any nature secured by a mortgage of real estate (either direct or assigned as collateral) or by any other instrument giving or purporting to give a lien on real estate until it shall have first secured the following:

(a) Certificate in writing signed by a competent person as to the title of the mortgagor to the mortgaged premises traced back at least twenty (20) years from date of instrument and giving full information as to the lien of the mortgage or other instrument held by the bank.

(b) Certificate in writing signed by a competent person certifying that all taxes assessed against the mortgaged premises have been paid in full to date of said certificate or, if this be not true, giving full information as to all taxes assessed against the mortgaged premises then due and unpaid.

(c) Appraisal of the mortgaged premises, in writing, signed by two (2) or more competent persons.

(d) If the mortgaged premises have insurable improvements thereon, proper policies of insurance in amounts and types of coverage to be fixed by the Board of Directors of the said bank or banking institution with N. Y. Standard Mortgagee Clause running to the said bank or banking institution.

EXCEPTION.

The restrictions and limitations of these regulations do not apply:

1. To loans or advances of credit already made.
2. To loans or advances of credit not exceeding five hundred (\$500.00) dollars.
3. To loans made under Title II of the National Housing Act.
4. To security taken in good faith by way of compromise of a doubtful claim or to avert an apprehended loss in connection with a debt previously contracted. (This rule filed Secretary of State's office October 18, 1937.)

R-4H. Any building and loan association operating under supervision of the state board of bank control shall publish in a newspaper in the county in which the association does business, upon call of the chief examiner, a report of condition, which report shall contain a statement under oath by the president and/or secretary-treasurer of such institution and shall be in such form as may be prescribed by the board of bank control. Provided, that in counties in which no newspaper is published the said statement shall be published in some newspaper having general circulation within the county in which the association is located. (This rule filed Secretary of State's office January 2, 1942.)

R-4J. Limitations and restrictions on loans by Building and Loan Associations operating under the authority and control of the said State Board of Bank Control other than loans secured by first mortgages on real estate and by its own shares.

- (a) Except as hereinbefore provided or otherwise permitted by law, no Building and Loan Association shall make any loan or advance of credit of any nature which is not secured by a first mortgage on real estate or by assignment of shares of the Association.

RULES AND REGULATIONS

(b) The restrictions and limitations of this regulation do not apply:

1. To loans or advances of credit already made.
2. To security taken in good faith by way of compromise of a doubtful claim or to avert an apprehended loss in connection with a debt previously contracted. (This rule filed Secretary of State's office July 20, 1942.)

R-4K. Any bank may participate in any loan made or granted by the Reconstruction Finance Corporation, to an amount not in excess of the limitations imposed by Sections 7857 and 7858 of the 1942 Code of Laws of South Carolina [§§ 8-225 to 8-228, S. C. Code of 1952]; and any bank may make and grant loans in any amount, which are participated in by Reconstruction Finance Corporation, or which that Corporation agrees to participate in; provided, the bank shall first obtain from that Corporation its commitment to purchase from the bank within a reasonable time after demand (to be agreed upon in the agreement of commitment) the amount in excess of the limitations imposed by the Sections of the Code mentioned above. (This rule filed Secretary of State's office March 29, 1943.)

R-4L. Specific limitations as to the extent to which banks may invest their funds in loans partially guaranteed under Servicemen's Readjustment Act:

Any bank, operating under the supervision of the Board of Bank Control and accepting demand deposits, shall confine the aggregate amount of loans, partially guaranteed under the provisions of Title III of the Servicemen's Readjustment Act of 1944, and which have maturities in excess of five years, to an amount not exceeding its combined capital and surplus, and

Provided further, that the total amount of any such loan to any one person shall not exceed 10% of the capital and surplus of any such bank, except that by approval, in writing, by two-thirds of the Directors of the bank, the amount may be extended to 15% of the bank's capital and surplus. (This rule filed Secretary of State's office March 22, 1945.)

Barber Examiners Board.

RULES AND REGULATIONS ADOPTED BY SOUTH CAROLINA STATE BOARD OF BARBER EXAMINERS.

Pursuant to § 56-268, S. C. Code of 1952.

(Filed Secretary of State's office August 2, 1946.)

Approved Barber Schools and Colleges.

1. An application for students permit must be filed with the State Board of Barber Examiners for each student upon entering the school or college.

2. A monthly report of each student enrolled shall be furnished the State Board of Barber Examiners on the first of each month. This report is to be as prescribed by the State Board of Barber Examiners.

3. All students shall receive not less than one hour of lectures and demonstrations each day, with the exception of Saturday. Each student must use the barbers Manual.

4. Students must complete a six months course in barbering (practical and studying), consisting of not less than seven hours for each working day.

5. After the student has graduated from the school or college, he must not be allowed to remain in the pay department to work on patrons.

6. All schools and colleges are required to report to the Board all students leaving school after they have been absent for a period of ten days.

7. All teachers and instructors are required to hold a registered barbers certificate and appear before the board for examination to qualify as a teacher. One instructor must be provided for every twenty students or fraction thereof.

8. All teachers and instructors are required to give their full time to the students and cannot do any professional work.

9. A sign must be displayed in front of the place of business designating that it is a barber school or college and stating that all barber work is done by students only. *NO SCHOOL OR COLLEGE SHALL IN ANY WAY BE CONNECTED WITH A BARBER SHOP.*

10. All students must be given a complete six months course in the following subjects.

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1. The scientific fundamentals of barbering.
2. Haircutting.
3. Shaving.
4. Shedding and regrowth of hair.
5. Hygiene.
6. Sanitation and Sterilization.
7. Anatomy.
8. Elementary Chemistry.
9. Massaging and scalp treatments.
10. Scientific Massaging and Manipulation of the muscles in the scalp, neck and face.
11. Instructions in diagnosis of contagious and non-contagious diseases.
12. History of barbering and professional ethics.

11. All schools and colleges must teach the curriculum as prescribed by the State Board of Barber Examiners.

12. All schools or colleges are subject to sanitary inspection at any time by the Board of Barber Examiners or its agents.

13. All barber schools and colleges are required to comply with the above rules and regulations in order to remain on the approved list. The State Board of Barber Examiners reserves the right to add to or amend these rules at any time.

Sanitary Rules Governing Barbers and Barber Shops and Barber Colleges.

(Filed Secretary of State's office August 25, 1937.)
except as otherwise stated.

1. Inspection.

All barber shops, or any other place where barber service is rendered, shall be open for inspection at all times during business hours to any members of the board of barber examiners, or its agents or assistants.

2. Proper quarters.

No barber shop shall be used as a dormitory, sleeping or living quarters or for the preparation of meals.

3. Barber shops.

Every barber shop, or any other place where barber service is rendered, shall be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition. Cuspidors and paper jars must be kept clean and sanitary at all times.

4. Fixture conditions.

Work stands or cabinets, towels and tools, and fixtures of all barber shops, or any other place where barber service is rendered, must be kept clean and sanitary at all times.

5. Water.

Running water, hot and cold, located at a convenient point within each barber shop, or any other place where barber service is rendered, shall be provided in cities or towns having water systems.

6. Water receptacles.

Barber shops, or any other place where barber service is rendered, not located in cities or towns having water systems, shall supply hot and cold water in such quantities as may be necessary to conduct such place of business in a sanitary manner. Hot water receptacles to hold not less than five gallons and a sink or lavatory with drain pipe to drain waste water outside of the building, shall be provided. The dipping of shaving mugs, towels, etc., into water receptacles is prohibited.

6(a). On account of the impracticability of complying with rule 6 and the other sanitary rules duly promulgated by the board, house to house barbering is hereby prohibited, and no certificate of registration will be issued to barbers practicing barbering from house to house, or to barbers who operate their shops in their homes, unless proper equipment is supplied and the sanitary rules and regulations are strictly complied with. (This rule filed secretary of state's office April 22, 1942.)

7. Styptic pencil and alum.

No person serving as a barber shall, to stop the flow of blood, use alum or other material unless the same be used in liquid or powder form. The use of common styptic pencil or lump alum shall not be permitted for any purpose.

8. Instruments.

All equipment used in connection with serving a patron shall be maintained in a clean

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and sanitary manner. Instruments or appliances of any kind which come in contact with the body of a patron shall be, before each separate use, sterilized by immersing in a solution of 60 per cent alcohol.

9. Hair brushes, combs and neck dusters.

Hair brushes, combs, and neck dusters, shall be kept clean and sanitary at all times.

10. Mugs and brushes.

All shaving cups and lather brushes must be kept clean and sanitary at all times.

11. Headrest.

The headrest of every barber chair shall be protected with fresh, clean paper or clean laundered towel before its use for any person.

12. Towels.

A clean, freshly laundered towel shall be used for each patron. This applies to every kind of towel—dry towel, steam towel, or washcloth. All towels that are used on a patron must be discarded until laundered. Used towels shall not be replaced in a sterilizer or rinsed or washed in the barber shop. All wet towels must be removed from the work stand or lavatory after serving each patron.

13. Haircloths.

Whenever a haircloth is used in cutting the hair, shampooing, etc., a newly laundered towel or paper neck strip shall be placed around the neck so as to prevent the haircloth from touching the skin.

14. Baths and toilets.

Baths and toilets must be kept in a clean and sanitary manner at all times.

15. Barber hands.

Every person serving as a barber shall thoroughly cleanse his or her hands immediately before serving each customer.

16. Barber appearance.

Each person working as a barber shall be clean, both as to person and dress.

17. Health certificates.

Each and every barber practicing the profession in South Carolina shall furnish the state board of barber examiners a satisfactory health certificate at such times as the board of barber examiners may deem necessary, signed by a physician in good standing and licensed by the South Carolina board of medical examiners.

18. Communicable disease.

No owner or manager of a barber shop, or any other place where barber service is rendered, shall permit any person suffering from a communicable disease of any form or any venereal disease in communicable form, to act as a barber in said shop unless upon a written order from a physician.

19. Treating disease.

No barber or other person in charge of any barber shall undertake to treat any diseases of the skin.

20. Shaving diseased faces.

No person serving as a barber shall shave any person when the surface to be shaved is inflamed or broken out, or contains pus, unless such person is provided with a cup, shaving brush and razor for his individual use.

21. Rules posted.

The owner or manager of any barber shop, or any other place where barber service is rendered, shall post a copy of these rules and regulations in a conspicuous place in said shop.

Any violation of these rules will be prosecuted according to law.

22. All barbers practicing barbering in South Carolina, upon applying for a license therefor shall furnish to the said board a certificate from a qualified practicing physician showing the results of the Wasserman test as applied to such barber. Said certificate must ac-

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company the application for license to practice barbering, as aforesaid. (This rule filed Secretary of State's office, September 25, 1939.)

23. When an application is made to the South Carolina state board of barber examiners for a license to construct, operate, and maintain a new barber shop, the said board, or its agents, shall, before said license is issued, inspect the premises, building, equipment, and other conditions surrounding the same to ascertain and determine if the said premises, building, and equipment complies with the sanitary rules and regulations appertaining thereto, duly promulgated and adopted by the said board. (This rule filed Secretary of State's office August 28, 1941.)

Budget and Control Board, State.

ADOPTED BY SOUTH CAROLINA STATE BUDGET AND CONTROL BOARD.

Pursuant to § 1-353, S. C. Code of 1952.

(Filed Secretary of State's office January 9, 1951.)

Pursuant to the Provisions of Reorganization Plan No. 2 approved by the General Assembly at its 1950 Session (The House February 2, 1950, The Senate February 15, 1950) the State Budget and Control Board adopts, subject to revision at any time by a majority of the Board, the Rules and Regulations set forth below to accomplish the several requirements numbered 1-10 in Paragraph (c) Section 1, and directs compliance therewith by all Agencies, Institutions and Departments of the State.

1. The Director of the Property Division, or the State Auditor, will, whenever considered advantageous but not oftener than monthly, supply "Inventory" forms such as attached Form #10, to any and all Agencies, Institutions and Departments from which stock reports are desired.

The Agencies, Institutions and Departments so instructed shall supply complete inventories of all property named that is on hand on the date designated.

2. Instructions governing the manner of deliveries of supplies, materials and equipment will be specified by the Director of the Purchasing Division or the Official authorized to place an order, when any purchase order is given. In the absence of specific instructions, all vendors will be expected to make deliveries in the manner that is most appropriate. The Directors of the Property and the Purchasing Divisions shall confer with the Heads of Agencies, Institutions and Departments and determine the most advantageous means and methods of storing and distributing supplies, materials and equipment required in the operation affected.

3. The Director of the Purchasing Division shall reduce to a minimum the number of kinds, sizes and varieties of commodities purchased for use by the various Agencies, Institutions and Departments for any given purposes. This may be accomplished by adopting for all commodities requirements and specifications fixed by the Director with a view to serving satisfactorily the purposes contemplated yet securing the widest practicable measure of competition consistent with those purposes. Any Agencies, Institutions and Departments may be required by the Director to furnish specifications for the commodities they desire. All requirements and specifications will be subject to revision before adoption by the Purchasing Division. In examining, preparing and revising specifications for adoption, the Director shall require the assistance, advice and cooperation of qualified representatives of any Agency, Institution or Department and of any of their technicians and laboratories.

The adopted requirements and specifications shall apply to every State purchase of the commodity affected while they are in effect.

4. It shall be the responsibility of the Agency, Institution and Department that takes delivery of any commodity to inspect each delivery for conformity with all requirements set forth in the purchase and when deemed advisable or when so instructed by the Director, to have chemical and/or physical tests made by any State laboratory or commercial laboratory capable of making the required tests. The costs of such testing shall be borne by the using Agency, Institution, or Department. Whenever samples are submitted with bids and it is considered necessary or advisable to make chemical and/or physical tests of same, the Director shall require such tests made by any State laboratory capable of performing the tests or shall engage the services of commercial laboratories where necessary. The costs of such testing shall be distributed among the users of the commodity tested.

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5. In cases of emergencies arising from any causes, including but not limited to, delays by contractors or by carriers, mechanical breakdowns, unanticipated volume in requirements or work, or where human life or State property is in jeopardy or the efficient operation of an Agency, Institution or Department will actually suffer for lack of a commodity, purchases of any necessary supplies, materials and equipment for prompt delivery to any Agency, Institution or Department may be made without formality, in the open market, by authorized officials provided that advantage is taken of every opportunity to economize by securing the best purchase agreement practicable.

In addition to the emergency purchases authorized above, purchases of the "Exempted" supplies, materials and equipment listed below may, until further notice, be made by authorized officials for each Agency, Institution and Department as needed. Whenever possible, these purchases must be made pursuant to competitive bidding and always with a view to securing every practicable advantage for the State. The services of the Purchasing Division will be available at all times to assist in this procurement. Detailed records of all purchases of "Exempted" commodities shall be kept by each Agency, Institution and Department and made available for review by this Board or the Director of the Purchasing Division.

Exempted Supplies, Materials and Equipment.

- (a) Perishable articles such as fresh meats, fish, vegetables, milk and eggs.
- (b) Medical, dental and optical supplies, instruments and prescription items.
- (c) Technical instruments, supplies, books and other printed matter on technical subjects, also Library books, pamphlets, maps and periodicals, also textbooks.
- (d) Repair and replacement parts for equipment and machinery.

6. At this time, no additional State storehouses are deemed necessary. The storehouses already in use and serving the individual Agencies, Institutions and Departments are authorized to continue in operation at the pleasure of and under the direction of the governing authorities of the respective Agencies, Institutions and Departments, provided that this Board through the Director of its Finance Division and/or Property Division may require at intervals, reports concerning the stocks in hand, the volume of property handled, the values of stocks and the costs of operation of the storehouses for the purposes of determining if warehousing operations are being conducted efficiently and if consolidations or complete centralization may be more advantageous.

For convenience and economy in the operation of all State Agencies, Institutions and Departments, it is further provided that any Agency, Institution and Department having in hand commodities that are surplus to or are in quantities in excess of its reasonably anticipated needs shall make the same available to other State Agencies, Institutions and Departments that may have immediate need of them. Transfers of commodities may be either by sales or exchanges at prices mutually agreed upon and approved by the Director of the Purchasing Division. Funds obtained from such transactions may be used by the seller to replace the commodities with like articles or articles that may be put to similar uses.

7. All Agencies, Institutions and Departments shall upon request from the Director of the Purchasing Division furnish estimates of all supplies, materials and equipment required by the respective Agency, Institution and Department for a designated period and at a time designated in advance of the need that will enable the Purchasing Division to properly establish purchase contracts.

The Director of the Purchasing Division shall consolidate wherever practicable, the estimates of the supplies, materials and equipment required by the various Agencies, Institutions and Departments and determine the total requirements of any commodities. When the total requirements of a given commodity will involve an estimated expenditure sufficient in the judgment of the Director, a purchase contract shall be made pursuant to the provisions set forth hereinafter, preferably for a definite period of time, and providing each Agency, Institution and Department the advantages obtained by the consolidation of requirements. All such contracts shall be certified to Agencies, Institutions and Departments by the Director of the Purchasing Division and the same shall place their orders for all required supplies, materials and equipment so provided with the certified sources of supply.

8. Methods of accounting, the procedures of same and the forms to be used by each Agency, Institution and Department shall be in strict accordance with instructions issued at intervals as necessary by the Comptroller General and/or the State Auditor. Requisitioning of supplies, materials and equipment shall be on forms prescribed by the Director of the Purchasing Division with the approval of the Comptroller General and the State

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Auditor and shall give all information necessary for properly accomplishing the purchase as well as establishing the fact that funds are available to cover costs of the commodities requisitioned.

9. All supplies, materials and equipment purchased directly or through purchase contracts by the Purchasing Division shall conform to requirements previously fixed by the Director of the Division with a view, first, to serving satisfactorily the purpose in contemplation and, second, to securing the widest practicable measure of competition consistent with that purpose. The procedure in making purchases or purchase contracts shall be adapted to the circumstances in each case, but in general one or a combination of the following plans shall govern:

(a) Awards of purchase contracts shall be made after advertising for at least ten days and receiving bids. This plan shall be followed wherever the supplies, materials or items of equipment proposed to be purchased are of standard quality and can be described so that all bidders will base their proposals on furnishing articles of identical quality. Advertisement shall consist in publishing in one or more daily newspapers of the State a statement covering the articles to be purchased under appropriate heading, provided that other methods of advertisement may be adopted by the Purchasing Division with the approval of the Board. In addition to newspaper advertisement descriptive notices shall be distributed by mail among parties known to be interested. Award, if made, shall be made in each case to the lowest responsible bidder whose bid shall have been formally made as required, taking into consideration the quality of the articles to be supplied, their conformity with the prescribed requirements and the purpose for which they are required; provided that in case no bids are received or the bids received indicate the existence of a combine, an understanding or agreement among the bidders for the purpose of fixing the price of the commodity proposed to be purchased, then the Director may, after rejecting all bids received, proceed to negotiate purchase contracts with individual firms so as to gain any available advantage either in price or purchase conditions and to that end may consummate purchase contracts with domestic or foreign persons, firms or corporations.

(b) Wherever the supplies, materials or items of equipment proposed to be purchased are not susceptible of standardization, then the Director, with the approval of the Board, may establish an eligible list of bidders and/or articles. Under this plan bidding shall be restricted to the eligible list of bidders and/or articles. Advertising and award shall be as required in Paragraph (a) of Paragraph 9.

(c) In purchasing supplies, materials or items of equipment that are controlled by virtue of patent rights so that competition is impracticable, or where the articles proposed to be purchased are produced and offered for sale by fewer than three reputable firms eligible to offer their products in direct competition and where it is impracticable to substitute other supplies, materials or items of equipment for those proposed to be purchased, purchase negotiations may be undertaken by the Director informally and purchase awards be made with the approval of the Board as a result of such negotiations, provided that each such award shall be accompanied by a statement describing in detail the procedure followed and provided further, that any purchase contract made under this plan shall be awarded only after advertising the intention to award in at least one issue of one daily newspaper published in the State.

(d) Supplies, materials and items of equipment necessarily purchased in order to replace parts of existing equipment and structures, which can be supplied only by the manufacturer of the original articles to be repaired, or by his authorized dealer or agent, may be purchased without formality, provided that the Director shall take advantage of every opportunity to economize by securing the best purchase agreements practicable. Advertising in this case shall consist in maintaining for review by the Board a complete record of all such transactions.

(e) In cases of emergency, as may be determined by the Chairman of the Board and the Director of the Purchasing Division, and subject to confirmation by the Board, the Director may make purchases of supplies, materials and equipment without formalities. All cases of purchases of this kind shall be reported in detail and made public at the next succeeding meeting of the Board.

10. The Board will at intervals and whenever considered necessary or advisable issue instructions to the Directors of its several Divisions and to Agencies, Institutions and Departments upon all matters concerning the operation of the central purchase and supply functions and the coordination of their activities.

General. These rules and regulations shall not affect the dealings of the Budget and Control Board and the Directors of its several Divisions, with the Federal Government

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or any subdivision thereof, nor any County or Municipality in the State. Such dealings shall be at the discretion of the properly designated authorities.
 Unanimously adopted December 20, 1950.

Form 10

Sheet No.,

State of South Carolina State Budget and Control Board Columbia

Inventory- 19...

Property		Agency, Department or Institution	Address		
Prepared by	Title	Custodian	Title		
Quantity	Unit	Description	Unit Price	Value	Audit

Forward

Date Submitted: _____ Certified correct: (Custodian)

Name _____

Title _____

The State Budget and Control Board on January 5, 1951, adopted the following regulation.

That all State departments, institutions, or agencies of the State of South Carolina are prohibited from cashing checks, or from exchanging cash for any form or evidence of indebtedness, for employees, or other individuals, from funds belonging to the State, or from funds held in the custody of any such department, institution, or agency of the State, by reason of its duties and functions, whether such funds belong to the State or not. All such checks, or other evidence of indebtedness, now held by any State department, institution, or agency, in lieu of cash, shall immediately be converted into cash and handled as prescribed by law. The State Auditor is specifically directed to report to the State Budget and Control Board any and all violations of this regulation.

Retirement System.

Pursuant to § 61-19 S. C. Code of 1952.

(Filed Secretary of State's office February 10, 1947.)

1. Work after retirement: No teacher or employee who has retired shall work for anyone who is a member of the Retirement System, after retiring. This is in accordance with Section 5(2) of the Act.

2. The State Retirement Act applies only to that portion of a teacher's salary which is received from State aid. Principals, Supervisors and teachers who do not receive State aid and are employed by Cities or Counties are not eligible for Retirement Benefits. For such a teacher to receive benefits the School District or County would have to enter the

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State Retirement System. Then they would receive benefits based on the total salary paid by the State, School District, County or Municipality.

3. The Act provides that teachers who have taught 35 years in South Carolina may retire and receive benefits beginning as of July 1, 1945. (However, the first payment cannot be made for several months after July 1, 1945.) The Act also provides that teachers over age 70 may be retired and receive benefits beginning July 1, 1946. No other teacher may receive benefits before July 1, 1947. The Board rules that insofar as the Retirement Act is concerned, these teachers may continue to teach if regularly employed to do so until cash benefits are available.

4. School Bus Drivers who are awarded contracts on the lowest or most responsible bid and are paid on a mileage basis are not eligible for membership in the Retirement System. When they are paid salaries by County or School District funds, bus drivers will come under the Act only when the County or School District comes into the System.

5. Any teacher of age 65 or over who was a teacher on April 26, 1945, can retire now without sacrificing any of her rights and privileges under the Retirement Act.

6. Under Section 1(2) of the Act, public school shall mean any day school, etc. Accordingly, the Board rules that a teacher will not get credit for work done in a night school.

7. Under Section 1 (16) of the Act, earnable compensation includes maintenance and other things of value, etc. Where a teacher or employee's salary includes maintenance, the Board of Trustees or governing Board are authorized to evaluate such services in terms of dollars which shall be included as salary by the Retirement Board. This evaluation shall generally be subject to revision by the Retirement Board. The four per cent deduction shall be based on the sum of money and of the evaluation of maintenance where such maintenance is furnished by a State Agency or employer agency.

8. Comparable service: A person who has taught in public schools in the State, and receives State aid, and later becomes a State employee under the definition of "employee" in the Retirement Act, shall receive full credit for the mixed service, provided there has not been a gap of more than five years between the services.

9. Leave of absence to study: Prior service credit shall be allowed teachers for such time as they are on leave of absence from the school or institution to further pursue their studies.

10. Appointive or elective officers: Elective or appointive officers means those elected or appointed to office where the term of office is fixed by Statute or the Constitution.

11. Prior service: No teacher or employee after reaching age 65 shall be given credit for work or teaching one after that age (See Section 5 (2c) of the Act.)

12. Benefits for teachers: In computing benefits for teachers, the State salary schedule for teachers must only be used, unless Counties, School Districts or Cities have come into the Retirement System. (See Section 9 of the Act.)

13. Helping teacher: Helping teachers shall be taken to mean the same as substitute teachers.

14. State aid: Until such time as it is determined, the amount of State aid that will be available for the school year 1945-46, the withholding from teacher's salaries for retirement purposes shall be on the same basis as that for the year 1944-45.

15. Social Security: Social Security is not considered a Retirement System.

16. A person who obtains employment with the State of South Carolina or other member employers, and who is not a member of the Retirement System, must become a member of the State Retirement System as a condition of employment. A person becoming an employee of the State after June 30, 1945, and who was a member of the Police Insurance & Annuity Fund on that date, will not be required to come into the State Retirement System since he is only transferring employment; provided, such transfer in employment is comparable to the duties heretofore performed, unless such person ceased to be a member of the said Police Insurance and Annuity Fund. Such a person if employed by the State or other employer member would have to become a member of the South Carolina Retirement System.

17. Permanent and temporary employees: Section 3 (3) of the Act provides that all teachers and employees with certain exceptions, who are employed after June 30, 1945, shall become members of the System as a condition of their employment. Where it is definitely known that the employment will be on a temporary basis only, no withholding for retirement purposes should be made from such a person's salary or wage. The payroll should show the name or names of such persons, their title, salary or wage, together with the notation "Temporary employee—no deduction for retirement." Persons em-

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played longer than ninety (90) days will be deemed to be permanent employees under the terms of the Act.

Charleston County Council.

ADOPTED BY CHARLESTON COUNTY BOARD OF COMMISSIONERS.

Pursuant to § 14-353, S. C. Code of 1952.

(Filed Secretary of State's office March 8, 1944.)

Tourist or Trailer Camps.
Subdivision of Land.
Zoning.

Tourist or Trailer Camps.

Be it ordained by the County Board of Commissioners of Charleston County, South Carolina, in regular session, that the following Regulations controlling the use and maintenance of Tourist or Trailer Camps or Parks and Tourist Courts in Charleston County, South Carolina, proposed by the Charleston County Planning Board are hereby approved and adopted, March 24, 1943.

PURPOSE OF AND AUTHORITY FOR REGULATIONS.

The following regulations controlling the use and maintenance of Tourist or Trailer Camps or Parks, and Tourist Courts are designed to secure adequate provision for light, air, access, water, drainage, sewer and other facilities in the interest of public health, safety and welfare.

These regulations are in accordance with the provisions of an Act of the South Carolina Legislature titled "The County Planning Act" and approved March 14, 1942.

Section 1. Definitions:

Tourist Camps shall include all places where lodging is offered to the public, and particularly to persons traveling in automobiles, and where separate houses or cabins are furnished to each guest or party of guests, but shall not include such institutions as are commonly known as hotels, inns or boarding houses. They shall also include what is commonly known as Tourist Courts, and Tourist or Trailer Camps, or Parks, where houses or cabins are not furnished but the premises are maintained, offered, or used for the parking or camping of house trailers, house cars or similar portable units of habitation, or any other mobile unit which may be used for semi-permanent or temporary living quarters, with any building, structure, enclosure and equipment of such camp or park.

"Commissioners" when used herein shall mean the County Board of Commissioners of Charleston County. "Charleston County" as used herein shall mean the unincorporated portions of Charleston County, South Carolina. "Board" as used herein shall mean the Charleston County Planning Board.

Section 2. Permits:

No person, firm or corporation shall use or maintain a Tourist or Trailer Camp or Park or Tourist Court in Charleston County without first obtaining from the Planning Board a permit so to do. All such permits shall be granted for the period of one year. A permit shall be subject to revocation for a failure to observe any one or all of the rules or regulations promulgated by the County Board of Commissioners or State Health Department regulating Tourist or Trailer Camps or Parks, and Tourist Courts.

Section 3. Application:

Any person, firm or corporation desiring to lay out or construct a Tourist or Trailer Camp, or Park or Tourist Court in Charleston County shall make application to the Planning Board for such permit on forms prescribed by the Board, and shall furnish such information as may be required. Said application shall give the name and home address of the applicant; the place where the proposed Tourist or Trailer Camp or Park, or Tourist Court is located.

There shall be a minimum fee of \$2.50 for a permit to lay out or construct a Tourist Court or Trailer Camp or Park, and 25¢ shall be the fee for each cabin or trailer camp site over ten in the proposed development. Such fees shall be paid at the office of the County

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Treasurer before permit shall be valid, and the County Treasurer shall not accept such fee unless the permit bears the approval of the County Planning Board.

Section 4. Site inspection, approval:

The Planning Board of Charleston County, South Carolina, shall check the proposed camp site, the plans for its development or if an existing development, its buildings and equipment, and shall call upon the County Health Department for any assistance that may be required in order to make proper report as to the Camp sanitation and other similar matters. The Planning Board shall make such requirements as it deems proper, keeping in mind particularly the elimination of traffic hazards, the elimination of objectionable sign displays, the general appearance of the Camp, Park or Court, and the general health and safety of guests, and the requirement of play space for children.

No person shall be granted the privilege to construct or conduct a Camp or Court, or Park unless the proposed site has been approved by the Board as conforming to the planning and zoning laws and regulations of the County.

Section 5. Cabin facilities:

Each cabin shall have a lavatory and be supplied with hot and cold running water and a commode.

In the case only of Tourist Courts in operation on the date of passage of these regulations, which are not in conformity with the requirements of this section, compliance may be made by providing sanitary facilities, in the ratio to guests accommodated, as is provided for Trailer Camps in Section 10 and Section 11 of these regulations.

Section 6. Drainage:

No Camp or Court shall be so located that the drainage of the camp area will endanger any water supply. All camps shall be well drained and located in areas free from ponds, swamps and similar places in which mosquitoes may breed.

Section 7. Spacing:

Each car and house trailer or similar mobile unit shall together be allotted a space not less than 875 square feet, a minimum of 25 feet in width and 35 feet in depth, clearly defined by approved markers. Each unit shall abut or face on a driveway or clear unoccupied space not less than 25 feet in width, which space shall have unobstructed, well-drained, plainly marked and adequately lighted access to a public street or public road. There shall be a space of at least 10 feet between each house trailer and front lot line, any other house trailer, building or other structure, and 3 feet from side or rear lot line.

Each cabin shall conform to above conditions of access and face an unoccupied space not less than 35 feet wide, and have no less than 1200 sq. ft. of allotted space and have a minimum of 15 feet space between cabins and any trailer, building or other structure.

Section 8. Water supply:

An adequate supply of safe water under pressure shall be provided in all parts of every camp, park or court. At least one water supply outlet shall be provided for every two house trailer units and in no case shall a house trailer site be more than 100 feet from a water supply outlet. Special hoses shall be kept for filling water tanks on house trailers and shall be stored off the ground under sanitary conditions when not in use. These hoses shall be so handled that contamination of water supply system or water in house trailer does not occur. The dipping of water from open springs, wells, streams or lakes for water supply purposes is prohibited, unless the source is approved by the County Health Department.

Section 9. Plumbing:

All plumbing in Tourist or Trailer Camps, or Parks and Tourist Courts shall comply with the rules and regulations of the State and County Health Departments and with any and all local and State laws pertaining to plumbing and the disposal of sewage and other water carried wastes.

Section 10. Camp toilets:

In camps catering to trailers, including those construed as Trailer Camps, or Parks, and Tourist Courts, offering facilities for trailers, water flush toilets shall be provided in conveniently located, well constructed buildings having good, natural and artificial lighting, adequate ventilation and floors of concrete or similar impervious material. Concrete curbs extending at least 6 inches above the floor shall be provided and the floor sloped

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to adequate drains. The interior walls and ceilings of such buildings shall be of smooth material painted with light colored paint. All such toilet facility buildings shall be adequately screened and meet County Health Department requirements as to their maintenance.

Section 11. Separation male and female:

Separate 2'8" minimum width compartment toilet facilities marked by appropriate signs shall be provided for males and females, at least one for each eight (8) trailers and provide as a minimum one toilet for each eight (8) females and one toilet for each twelve (12) males and one urinal for each sixteen (16) males accommodated in the camp. At least one urinal shall be provided in each toilet for males, 24" of trough being equal to one urinal. Toilet buildings shall be located within 200 feet of all house trailer camping spaces. One lavatory shall be provided for each two or less toilets or urinals and be supplied with hot and cold water. Separate showers with hot and cold water shall be provided for males and females and the building containing them shall comply with all the requirements of this section and these regulations. One shower with hot and cold water shall be provided for each sex for each eight (8) house trailers or fraction thereof, and each shower shall have at least ten (10) square feet of floor space and be accompanied by a dressing compartment at least ten (10) square feet in area. All floors in shower and toilet rooms shall be disinfected daily by the use of chlorine compounds or other materials in strength approved by the County Health Department.

Section 12. Laundry room:

In camps where house trailers remain for a period of days or guests are semi-permanent, the Planning Board may require the installation of a laundry room or building constructed in the same manner as prescribed for toilets and these rooms or buildings shall be provided with one double laundry tray for each 10 house trailers and hot and cold running water.

Section 13. Sinks:

Slop sinks properly tapped and vented shall be provided in convenient locations, at least within 200 feet of each house trailer camping space. All slop sinks shall be constructed and equipped with water faucets which shall be protected from back-siphonage. Slop sinks shall be constructed and installed so they may be used for the cleaning of both cans and slop jars, and at least one such sink for each 20 house trailers or fraction thereof.

Section 14. Sewage, sanitation:

All sewage and other water carried wastes shall be disposed of into a municipal or other publicly owned sewer system whenever possible. In camps in which sewer connections are not available, disposal shall be in a private system which conforms to regulations of the County Health Department. All trailer toilets shall be closed for use in camp. No flush toilets may be used in trailers while in camp unless connected to the sewerage system in accordance with the rules and regulations of the State and County Health Departments. Facilities shall be provided to each house trailer camp for draining the contents of chemical toilets and sewage storage tanks, if their use be permitted in the camp. Such facilities shall have concrete or equally impervious floors and shall be adequately screened against flies and other insects.

The management shall provide for cleaning once daily, oftener if necessary, to maintain these facilities clean and sanitary. Wastes from sinks and refrigerators may be discharged into covered metal receptacles and disposed of into slop sinks without being discharged on the surface of the ground provided specific approval is obtained from the County Health Officer.

Section 15. Fly protection:

Fly tight adequate metal garbage containers shall be provided for each trailer. At least one depository shall be within 100 feet of each trailer camping site. Garbage cans shall be emptied at least once every two days and shall not be allowed to become foul smelling or breeding places for flies. Garbage shall be disposed of in the manner approved by the County Health Department.

Section 16. Fire protection, removal of wheels:

All Tourist or Trailer Camps, or Parks and Tourist Courts shall be kept free from litter, rubbish and inflammable material at all times. Fire extinguishing equipment suitable for emergency measures which have been approved by the Fire Department shall be maintained in working order at all times within 200 feet of each trailer or camp structure.

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Fires shall be made only in stoves, incinerators or other equipment intended for that purpose.

Removal of wheels, except for repair, or attaching trailer to ground on piers, posts, foundation or skirting shall not be permitted.

Section 17. Electric supply:

Electrical outlets for each trailer camping site and for each cabin shall be provided and installed in compliance with good electrical wiring practice and be subject to the approval of the Building Inspector.

Such outlets and bulbs shall be adequate and the service shall be continuous day and night in toilets and showers. Service in cottages and to trailer camp sites may be discontinued during the daylight hours.

Section 18. Domestic animals and pets:

No domestic animals or fowls shall be permitted in Trailer or Tourist Camps or Parks. Dogs and pets shall be permitted only when confined, or under leash, but not in the cottages of tourist courts.

Section 19. Conformity to codes:

In addition to these requirements set forth above, all camps and courts and the facilities therein shall be established and constructed in compliance with all existing state and county statutes, ordinances, codes and regulations.

The use of Trailer Camp or Park space shall be in conformity with the provisions of these regulations and any amendment thereto, and in compliance with all existing State and County statutes, ordinances, codes or regulations.

Section 20. Trailer on residential property, outside a trailer camp or park:

No trailer used as an habitation shall be parked for more than 48 hours without a permit on a residential property having a site area of less than 9000 square feet, nor for more than 24 hours on any lot which is not a part of the premises of an unoccupied dwelling. It shall be allotted a minimum of 700 square feet of space and have a minimum of 20 feet separation between it and any principal building or accessory building on the premises. Such use shall be temporary only and for a period not to exceed 60 days, when the health and sanitation requirements of this ordinance are complied with, and a permit obtained at the office of the County Planning Board shall be required, nor shall any person permit such parking use, or occupancy beyond 48 hours unless the occupant of the trailer shall first have obtained a permit therefor from the Board.

No person shall park, use or occupy any trailer of any kind on any street, alley, highway or other public place; or in any tract of land in Charleston County except as provided in this ordinance or the Interim Zoning Ordinance.

Section 21. Non-conforming use:

Any Tourist or Trailer Camp or Park, or Tourist Court, which is in use on the date of adoption of these rules and regulations by the County Board of Commissioners, and which is not in conformity with these rules and regulations may be continued under the permit therefor required by Section 2, and subject to the provisions hereof. No such non-conforming use may be re-established on any premises where such non-conforming use has been abandoned or discontinued for at least six months. Any non-conforming building or structure damaged or destroyed by fire, explosion, riot or Act of God, may be reconstructed and the premises used as before any calamity, provided that the building or structure be restored to its original value and provided the reconstruction takes place within twelve months after such calamity.

Non-conforming Tourist or Trailer Camps or Parks, or Tourist Courts shall within six months after the duration of the present war emergency discontinue or terminate such non-conforming use.

Section 22. Penalty:

Any structure or land used in violation of these regulations, or the violation by any person or persons of any of the provisions of these regulations or amendments thereof, shall be a misdemeanor under the laws of the State, and the offender upon conviction shall be punished as for a misdemeanor, and any court of the County having jurisdiction of misdemeanor cases shall have jurisdiction to try such offenders and upon conviction to so punish them; and provided further that each day that any structure or land is used in violation of these regulations shall constitute a separate offense.

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Section 23. Conflict:

Any resolution or ordinance or parts of resolutions or ordinances adopted by the County Board of Commissioners which are in conflict with the provisions of these regulations are hereby repealed and declared null and void.

Section 24. Validity:

Should any section, clause or portion of these regulations be declared by the courts to be invalid, the same shall not affect the validity of the regulations as a whole or any part thereof, other than the part so declared to be invalid.

Section 25. Effective date:

These regulations shall become effective from the date of their adoption by the County Board of Commissioners.

Subdivision of Land.

Be it ordained by the County Board of Commissioners of Charleston County, South Carolina in regular session March 24, 1943, that the following Regulations Controlling the Subdivision of Land in Charleston County, South Carolina, proposed by the Charleston County Planning Board and hereby approved and adopted, and supersede all previous ordinances, rules and regulations for that purpose.

PURPOSE OF AND AUTHORITY FOR REGULATIONS.

The following regulations controlling the subdivision of land in the unincorporated portions of Charleston County are designed to provide for the harmonious development of the County, to secure a coordinated street and road layout and adequate provisions for traffic, and also to secure adequate provisions for light, air, recreation, transportation, water, drainage, sewer and other sanitary facilities. These regulations are in accordance with an Act of the South Carolina Legislature to "Authorize County Planning in all Counties in this State Containing a City Having a Population of more than 70,000 According to the Official United States Census" approved March 14, 1942.

The regulations of this Ordinance shall not apply to any residential subdivision formally approved by any agency of the United States before January 1, 1942 or any residential subdivision as to which application for approval is made to any such agency before January 1, 1943, and which is approved after that date by such agency.

Section A—Procedure.

1. General.

Before any street or road is opened or extended, or before any new subdivision for residence, business, or industrial use is made, the person or persons proposing to open or extend such streets or roads or such new subdivisions, shall submit a detailed plan of same, with other necessary data, to the Planning Board. The plan of subdivision shall be such as to meet the minimum requirements as detailed herein under Section B.

Previous to submission of a preliminary plat, subdividers are invited to discuss with the Planning Board or its staff preliminary studies or sketches or problems.

The preliminary plat in duplicate shall be submitted with a written application for examination; and to receive consideration at the next subsequent meeting of the Planning Board, shall be filed at the office of the Board not less than five days prior to such meeting.

The plat shall comply with the provisions, contain the information, and be accompanied by the material required under the provisions of Section D and as may be required by the Planning Board in pursuance of such provisions.

There shall be a minimum fee of \$2.50 for a permit for each subdivision and 25 cents shall be the fee for each lot over ten in the proposed development as shown on the plat. Such fees shall be paid at the office of the County Treasurer before permit shall be valid, and the County Treasurer shall not accept such fee unless the permit bear the stamp and approval of the County Planning Board, or the Board of Adjustment, and the County Board of Commissioners of Charleston County.

2. Tentative approval.

After reference of the plat to the Engineer of the Planning Board for review and report as to street and lot lay-out, and other features of the plan, and as to compliance with these regulations, and after such negotiations with the applicant for changes in the plat as the Planning Board may deem advisable, the Board shall, within a reasonable time, pass upon the preliminary plat as originally submitted or modified, and, if approved,

shall transmit the plat and the data accompanying the application to the County Board of Commissioners for its consideration. If the Planning Board disapproves the preliminary plat it shall state its reasons for such disapproval, and transmit the plat, the data accompanying the application and the statement of its disapproval to the County Board of Commissioners for its consideration.

If the action of the County Board of Commissioners be one of approval, such approval shall not constitute a final acceptance of the plat and shall not be noted on the plat, but shall be deemed merely an expression of approval of the layout submitted on the preliminary plat. The final approval of the final plat for record will be considered only after the requirements outlined herein under Section C shall have been fulfilled.

3. Final plat.

The final or record subdivision plat shall be prepared and submitted to the Planning Board in triplicate, original and two copies, by the owner of the property or his authorized representative within one year after the approval of the preliminary plat; otherwise the approval of the preliminary plat shall become null and void unless an extension of time is applied for and the application is granted by the Planning Board, and the County Board of Commissioners.

The final plat shall comply with and shall contain the complete data as required under Section E, and shall be accompanied by such other data or material as is described in Section E. Reproductions of all final or record plats and of the index sheet, if any, shall be furnished. After approval by the Planning Board the final plat shall be submitted for final approval to the County Board of Commissioners.

4. Endorsement.

All forms, such as endorsements, dedications and certificates, insofar as required to be entered on a plat, shall be in accordance with the standards of the Board, as on file in the office of its Secretary; and except where otherwise required or permitted, shall be signed by the owner of the property. The duplicate and triplicate of the final plat shall contain all signatures, endorsements, dedications and certificates and shall be left with the Planning Board for its files or transmission to other departments, and the original linen tracing retained in Planning Board files, from which prints can be made for and at owner's expense on request at Planning Board office.

Section B—General requirements and minimum standards of design.

The following shall be considered as minimum requirements and will ordinarily be varied by the Board only under the conditions and circumstances set forth in these regulations.

1. Conformity to official plan or map.

Subdivisions shall be in harmony with the master plan and/or the official map of the County.

2. Relation to adjoining street system.

Insofar as the master plan or official map does not indicate the size, location, direction and extent of a street, and subject to the regulations hereinafter specified regarding definite minimum widths, the arrangement of streets in a subdivision shall provide for the continuation of the principal streets existing in the adjoining subdivisions, or of their proper projection when adjoining property is not subdivided, and shall be of a width at least as great as that of such existing streets.

A. Where, in the opinion of the Planning Board topographical conditions make such continuance or conformity impracticable, or

B. In cases where the County Board of Commissioners adopts a plan or plat of a neighborhood or area of which the subdivision is a part and this plan or plat provides coordination with the street system of the county different from that of said continuations or projections of existing streets and the subdivider's plat conforms to such adopted neighborhood or area plat or plan, the Board may approve the subdivider's plat.

Where the plat submitted covers only a part of the subdivider's tract, a sketch of the prospective future street system of the part not submitted shall be furnished and the street system of the part submitted shall be considered in the light of adjustments and connections with the street system of the part not submitted.

Where a tract is subdivided into lots of an acre or more, the Planning Board may re-

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quire an arrangement of lots and streets such as to permit a later resubdivision in conformity with the street requirements specified in these regulations.

3. Access.

There shall be no reserve strips controlling access to streets, except where the control of such strips is definitely placed in the County under conditions approved by the County Board of Commissioners. The subdividing of the land shall be such as to provide each lot, by means of either a public street or way or permanent easement, with satisfactory access to an existing public highway or to a thoroughfare as shown on an official map or master plan.

4. Street widths.

The minimum width or right of way for main thoroughfares shall be as shown on the county's master plan or official map and shall, when not indicated on such master plan or official map, be not less than one hundred (100) feet; for minor streets eighty (80) feet; and for local service and minor streets which cannot in the future be extended fifty (50) feet. These widths shall be measured from lot line to lot line. In cases where the topography or other physical conditions make a street of the required minimum width impractical, the County Board of Commissioners may modify the above requirements. A half street along adjoining property may be approved.

5. Rounding street corners.

Whenever necessary to permit the construction of curbs having a minimum radius of 35 feet at street corners without curtailing the sidewalk to less than normal width, the property line at such street corners shall be rounded or otherwise set back sufficiently to permit such construction. Normally the radius of the property line shall not be less than 20 feet. Larger radii may be required by the Planning Board when, in its opinion, such design is advisable. In business districts a chord may be substituted for an arc.

6. Easements.

Except where alleys of not less than fifteen (15) feet are provided for the purpose, the Board may require easements, not exceeding six (6) feet, on each side of all rear lot lines, and on side lot lines where necessary or, in the opinion of the Board advisable, for poles, wires, conduits, storm and sanitary sewers, gas, water and heat mains or other utility lines. Easements of the same or greater width may be required along the lines of or across lots where necessary for the extension of the existing or planned utilities.

If in the opinion of the Planning Board the most suitable and reasonable location for any of the utilities, such as sewers, storm drains, water and gas pipes and electric pole lines and conduits, which are likely to be required within a subdivision, either for the service thereof or for service of areas in the surrounding territory, do not lie wholly within the streets, including alleys, if any, shown upon the plat, the Board may require, insofar as reasonable, provision to be made for the location of such utilities on routes elsewhere than within said streets, either by the dedication of public easements for the same as part of the plat or by the filing of supplementary instruments which will adequately protect the public interest in the proper location of said utilities.

7. Dead end streets.

Streets designed to have one end permanently closed (cul-de-sac) shall be provided at the closed end with a turn-around roadway having a minimum radius for the outside curb of at least thirty-five (35) feet.

8. Grade of streets.

Streets grades shall not exceed 5 per cent for main thoroughfares and 5 per cent for minor streets; nor be less than one-half of one per cent in the gutter profile. Variation from these grades may, however, be permitted by the Board where advisable to adjust to topographical conditions.

9. Intersection angles.

As far as practicable, acute angles between streets at their intersections are to be avoided, and where a deflection angle of more than ten degrees in a street line occurs at any point between two intersecting streets, a curve of reasonably long radius is to be introduced.

10. Block lengths.

Intersecting streets shall be so laid that blocks between street lines shall not be more

than sixteen hundred (1600) feet in length; except that where, in the opinion of the Planning Board, extraordinary conditions unquestionably justify a departure from this maximum, the Board may require or permit greater distances between street lines. In blocks over seven hundred (700) feet in length, the Board may require at or near the middle of the block, a public cross walk, having a right of way of not less than ten (10) feet in width for foot traffic.

11. Block widths.

The widths of blocks preferably shall be such as to allow two tiers of lots, unless exceptional conditions are, in the opinion of the Planning Board, such as to render this requirement undesirable.

12. Lot arrangement.

In all quadrangular lots, and so far as practicable all other lots, the side lines shall be at right angles to straight street lines or radial to curved street lines. An arrangement placing adjacent lots at right angles to one another shall be avoided where practicable. Double frontage lots shall be avoided.

13. Lot sizes.

The minimum width for residence lots shall be sixty (60) feet and in no case shall a residence lot contain less than six thousand (6000) square feet. Corner lots shall have such extra widths as will permit the establishment of building lines on both streets. Where alleys are shown, the Planning Board may limit the depth of lot for the purpose of preventing future alley lots or buildings.

In Rural Districts Sub-division every principal building and its accessory buildings shall be placed on a minimum of 40,000 square feet of land area.

In Commercial Districts Sub-division no Commercial building shall be erected on a lot having a width of less than twenty-five (25) feet or an area of less than three thousand (3000) square feet.

14. Tree planting.

The planting of street trees is optional with the subdivider, but if done, planting plans in duplicate must be submitted to the Planning Board and receive its approval before planting of street trees is begun.

15. Public open spaces.

Where a small park or other neighborhood recreational open space shown on an official map or plan adopted by the County Board of Commissioners is located in whole or in part in the applicant's subdivision, the Board shall require the dedication or reservation of such open space within the subdivision for park, playground or other recreational purposes. In those cases in which the Planning Board deems such requirement to be reasonable, not to exceed ten per cent (10%) of the subdivision area shall be designed and dedicated or reserved for park, playground, or other recreation purposes, and unless provision is made for its maintenance it shall be deeded to the County.

Section C—Developments prerequisite to final approval.

1. Final approval.

The Planning Board will consider approval of the final plat for record only after monuments have been installed in accordance with the specifications given hereunder and after there shall have been filed with the Board:

(a) A certificate from the County Engineer that all streets shown on the plat have been graded and improved, and that where required by the Planning Board, sewerage and water utilities and drainage facilities have been installed in accordance with the approved specifications; or

(b) A duly completed and executed bond, certified by the County Attorney as valid and enforceable by the County and in an amount with surety satisfactory to the County Board of Commissioners, securing the making and installation of these improvements, utilities and facilities within the period fixed by the Board.

(c) Satisfactory evidence that adequate and proper maintenance will be given streets, utilities, and facilities till that service shall be assumed by the County.

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2. Monuments and markers.

Monuments shall be placed at all block corners, angle points, points of curves in streets, and at intermediate points not exceeding one thousand (1000) feet on exterior straight lines.

Monuments shall be of stone or concrete and the tops of the monuments shall project four (4) to six (6) inches above the surface, and the base shall be at least thirty (30) inches below the surface. The least cross-sectional dimension of stone or concrete monuments shall be four (4) inches at the top and six (6) inches at the base.

Pipe or iron bar markers for lot corners and points of curvature in lines shall be at least three-quarter (¾) inch in diameter, and twenty-four (24) inch minimum length, set to project two (2) to four (4) inches above the surface.

Section D—Preliminary plat.

1. Scale.

The scale of the preliminary plat is optional but shall not be smaller than two hundred (200) feet to one (1) inch.

2. Information to be shown.

The preliminary plat shall show:

(a) The location of then existing property lines, streets, buildings, water courses, railroads, utilities and other similar features.

(b) The names, locations, widths and other dimensions of proposed streets, alleys, easements, parks, and other open spaces, reservations, lot lines, building lines and utilities.

(c) The approximate location in the adjoining streets or property of existing sewers and water mains, culverts and drain pipes, electric conduits or lines proposed to be used on the property to be subdivided, and invert elevations of sewers at points of proposed connections.

(d) The title under which the proposed sub-division is to be recorded, with the names and addresses of the owner, the technical author of the plan and a notation stating the acreage.

(e) The names of sub-division immediately adjacent; also the location and names of adjacent streets and other public spaces on immediately adjoining properties.

(f) All parcels of land proposed to be dedicated to public use and the conditions of such dedications, if any.

(g) When requested by the Planning Board, contours at vertical intervals of not more than five (5) feet where the slope is greater than ten per cent and not more than two (2) feet where the slope is less than ten per cent. Elevations shall be marked on such contours based on a datum plane approved by the County Engineer.

(h) Date, north points, scale.

(i) When required by the Planning Board the preliminary plat shall be accompanied by profiles showing the existing ground surface and proposed street grades, including extensions for a reasonable distance beyond the limits of the proposed sub-division; typical cross sections of the proposed grading, roadway and side walks; and preliminary plan of proposed sanitary and storm sewers with grades and sizes indicated. All elevations shall be based on a datum plane approved by the County Engineer.

(j) The preliminary plat shall be accompanied by a plan indicating the use of the lots proposed by the subdivider whether for one-family dwellings, multi-family housing, business or industrial purposes, and copies shall be submitted of the proposed documents or instruments whereby the use, building line, open space and other restrictions are proposed by the subdivider to be imposed.

Section E—Final Plat.

1. Drafting standards.

The final plat shall in general be drawn upon tracing cloth in sheets 18" wide by 26" long, or 26" x 39", and, unless the Board permits a lesser scale, to a scale of not less than 100 feet to an inch; provided that when more than one sheet is required, an index sheet of the same size shall be filed showing the entire subdivision on one sheet with block and lot numbers.

2. Data required on plat.

The final plat shall comply with and shall contain all data specified in the following; and be in conformity with information required in Section D:

(a) The lines and names of all proposed streets or other ways or easements and other open spaces intended to be dedicated for public use or granted for use of inhabitants of the sub-division; also lines of all adjoining streets.

(b) The length of all straight lines, deflection angles and radii, arcs and central angles of all curves, along the property lines of each street. All dimensions along the lines of each lot, with the true bearings and angles of intersection which they make with each other and also any other data necessary for the location of any lot line in the field; also the location of all building lines proposed to be improved by the subdivider. If more convenient, calculated bearings may be used instead of angles.

(c) Suitable primary controls points, approved by the County Engineer, or descriptions and "ties" to such control points, to which all dimensions, angles, bearings and similar data given on the plat shall be referred. All dimensions shall be shown in feet and decimals of a foot.

(d) The location of all permanent monuments.

(e) The names of all subdivisions immediately adjacent; or, when adjoining property is not a recorded sub-division, the names of the owners thereof, and the book and page where adjoining subdivisions or tracts are recorded.

(f) Date, title, north point and scale. The title shall include the name of the sub-division under which it is to be recorded. The north point may indicate either the magnetic or true north and shall be so designated on the map.

(g) The boundary of the subdivided tract, with courses and distances marked thereon. Such boundary shall be determined by survey in the field, which shall be balanced and closed, made by a qualified engineer or surveyor and certified to be correct.

3. Other data required.

(a) All required forms such as endorsements, dedications and certificates.

(b) The final plat shall be accompanied by the following: A certificate of title showing the ownership of the land to be in name of the subdivider or his principal or other applicant for approval.

(c) If the subdivision does not lie within the force and effect of the existing zoning ordinance, a plan showing the proposed use, yard area and other restrictions on each lot within the sub-division; and a statement of the provisions and instruments whereby such building lines, minimum yard and use restrictions will be imposed.

4. Filing final plat for record.

No plat shall be accepted for filing for record by the official county recording officer until and unless it bear the official and final approval of the County Planning Board and of the County Board of Commissioners of Charleston County.

5. Acceptance of dedication.

The approval of final plat by the Planning Board and the County Board of Commissioners shall be deemed acceptance of the dedication shown thereon, but shall not impose any duty on the County concerning maintenance or improvement.

Section F—Definitions.

For the purpose of these regulations, certain words used herein are defined as follows:

1. Plat.

The map, drawing or chart on which the subdivider's plan of subdivision is presented and which he submits for approval and intends in final form to record.

2. Master plan.

The comprehensive plan made by the Planning Board which indicates the general locations recommended for the various functional classes of public works, places and structures. (Streets, parks, public buildings, etc.)

3. Official map.

The map on which the planned locations, particularly of streets, are indicated with detail and exactness so as to furnish the basis for property acquisition or building restrictions.

4. Building line.

A line on a plat indicating the limit beyond which buildings or structures may not be erected.

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5. Subdivision.

The division of a lot, tract or parcel of land into two or more lots or other division of land for the purpose, whether immediate or future, of transfer of ownership or building development including all changes in street or lot lines; provided however, that divisions of land for agricultural purposes, in parcels of more than 10 acres, not involving any new street or easement of acres, shall be exempted.

6. Lot.

A portion of a sub-division or other parcel of land intended for transfer of ownership or for building development.

Penalty.

Any violation of these Regulations or amendment thereof, shall be a misdemeanor under the laws of the State, and the offender upon conviction shall be punished as for a misdemeanor, and any court of the County having jurisdiction of misdemeanor cases shall have jurisdiction to try such offenders and upon conviction to so punish them; and each day that any structure or land is used in violation of these Regulations shall constitute a separate offense.

Validity, Effective Date.

Any clause or provision of this ordinance declared invalid by the Courts shall not affect the validity of the regulations as a whole or any other part thereof.

This ordinance shall take effect and be in force from and after its adoption by the County Board of Commissioners.

Zoning.

(Filed Secretary of State's office March 8, 1944.)

Whereas by Act of the General Assembly known as "The County Planning Act", approved March 14, 1942, the County Board of Commissioners was authorized to make, adopt and promulgate and from time to time amend, extend and add to regulations effective in the unincorporated portions of the County restricting height, number of stories and sizes of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open space, the density of population, the location and use of buildings and other structures, and the use, conditions of use, or occupancy of land for trade, industry, residence, recreation, transportation, agriculture, grazing, soil and water conservation, forestry, flood control or other purposes; to provide for county planning; to provide for the regulation of subdivision of land; and to establish set-back lines for buildings and structures along the streets and roads, and

Whereas because of the war an abnormal amount of private development is taking place and is expected to continue to occur in Charleston County, and whereas it is the opinion of the County Board of Commissioners that much is of a temporary nature which unless properly planned and controlled may constitute a hazard and liability to health, safety and welfare of the people residing in the area now and after the war, and

Whereas such development also may impair property values and tend to create financial obligations of unstable proportions, therefore, be it resolved that an interim zoning ordinance be enacted and put in force until such time as a careful survey and study of conditions in the county can be completed and a comprehensive zoning map and ordinance prepared and adopted, and

Whereas the Charleston County Planning Board, created under the authority of "The County Planning Act" has certified its approval of the content of a proposed Interim Zoning Ordinance, after having held a public hearing of which fifteen days prior published notice had been given,

Therefore, for the purpose of lessening congestion in the roads and streets; protecting the development of both urban and non-urban areas; securing safety from fire, flood, erosion and other dangers, providing adequate light and air; promoting the health and general welfare, encouraging such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate economic and adequate provision for transportation, communications, roads, airports, water supply, drainage, sanitation, education, recreation or other public requirements, conserving and developing the natural resources; fostering the State's agricultural and other industries, and protecting the food supply, the County Board of Commissioners of Charleston County hereby make, adopt and promulgate the following:

Section 1.

The unincorporated portion of Charleston County, South Carolina on the day of adoption of this ordinance are hereby divided into five classes of districts, as follows:

1. Rural Districts
2. "A" Residential Districts
3. "B" Residential Districts
4. Commercial Districts
5. Industrial Districts

Section 2. Rural districts.

All areas not included in "A" Residential Districts, "B" Residential Districts, Commercial Districts or Industrial Districts, shall be Rural Districts. In Rural Districts the uses of land, buildings and structures, and the erection or alteration of buildings and structures shall not be subject to the provisions of Section 4 to 8 herein, except with respect to advertising signs.

Tourist Courts, Tourist Camps, Trailer Camps, Gasoline and/or Oil Stations, Public Garages, Lunch Stands or Barbecue Restaurants, Fruit and Produce Stands may be permitted under regulations of Section 9: Special Restrictions. The restrictions as to advertising signs under Section 6 shall govern in connection with the uses listed in this paragraph.

In all other areas in Rural Districts no advertising signs shall be erected or installed within 150 feet of the center line of any highway, road or street, except:

- (a) Officially recognized directional or historical markers of approved size and design.
- (b) Signs, relating to farm produce grown or produced on the premises or signs in connection with the sale or rental of the premises, such signs not to exceed 20 square feet in area; and not more than two signs to be allowed on the premises.

The Planning Board may grant, through its Building Inspector, on proper application, authority to erect advertising signs not nearer than 150 feet to the center line of any highway, road or street, if the highway right of way is less than 125 feet wide from the center line, and 25 feet from the right of way line of any highway, road or street if the highway right of way is more than 125 feet wide from the center line, provided:

1. That such sign is not so located as to constitute a hazard to traffic at a curve and is not within 500 feet of a public road intersection, public park, parkway, reservation, playground, school, church or cemetery.
2. That such sign, in order to avoid diverting attention of traffic from the road, in the interest of safety, is not placed within 500 feet of another advertising sign placed on the side of the road.
3. That such advertising sign is not in or within 500 feet of an area which may, after a public hearing, be designated as an area of scenic beauty or historic interest.
4. That such advertising sign shall not exceed 15½ feet in width and 52 feet in length and shall carry not more than two advertising units.
5. No portable signs will be permitted.
6. Signs must not involve motion or display intermittent lights. Signs must not use the words "stop" or "danger" prominently displayed or imply the requirements of stopping, or existence of danger, or be a copy or imitation of an official sign.
7. The Planning Board may grant permits for temporary signs for special purposes in the interest of public welfare.

Section 3. Rural districts, area regulations.

No building shall be erected nearer to a State Highway than 35 feet away from any established right of way line and in no case nearer than 125 feet from the center of the State Highway. On roads other than State Highways no building shall be erected nearer than 35 feet from any established right of way line and, in no case, nearer than 75 feet from the center line of the road.

Every principle building and its accessory buildings hereafter erected shall be placed on a minimum of 40,000 square feet of land area, with a minimum side line clearance of 25 feet and a rear line clearance of 30 feet.

Section 4. Residential districts.

All subdivided areas not designated herein as Commercial or Industrial Districts shall be either "A" Residential Districts, or "B" Residential Districts.

An "A" Residential District shall be a residential district in which 65% of the existing dwellings are designed and built to accommodate one family.

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A "B" Residential District shall be a residential district in which 65% of the existing dwelling are designed and built to accommodate two or more families.

In "A" Residential Districts, no building or structure shall be erected, altered, or used for any purpose, nor shall any premises be used for any purpose except:

1. One Family Dwelling.
2. Taking of not more than four boarders or lodgers only by a resident family.
3. Church, or other place of worship.
4. Educational use, including fraternity house, sorority house or dormitory for faculty or students.
5. Library or Museum.
6. Park, playground or athletic field not operated as a business for profit.
7. Hospital.
8. Garden.
9. Cemetery, Commercial Greenhouse, Nursery, or Farming, provided that no permit for such use shall be granted until approved after a public hearing preceded by a published notice at least one week before said hearing.
10. Well, Reservoir or Filter for water supply.
11. Accessory use customarily incidental to any of the above uses.

In "B" Residential Districts no building or structure shall be erected, altered or used for any purpose, nor shall any premises be used for any purpose, except:

1. Any use permitted in an "A" Residential District.
2. Two-Family Dwelling.
3. Multiple Dwelling.
4. Club, having as its chief activity no service customarily operated as a business.
5. Power Station.
6. Apartment Hotel.
7. Renting of rooms or lodgings, or the serving of meals for compensation by a member of the family occupying the premises.
8. Accessory use customarily incidental to any of the above uses.

The sale of produce not raised on the premises, a garage space for more than one commercial vehicle or two automobiles per resident family on 6000 square feet of lot area, or any use not on the same lot with the building to which it is necessary, or any use injurious, noxious, offensive or detrimental to the neighborhood shall not be permitted.

No sign other than one used in connection with the sale, leasing or rental of the premises, said sign not to exceed eight square feet in area, shall be permitted, except that where a subdivision or large tract of land is involved permission may be given for the temporary erection of a sign, not to exceed 32 square feet in area, for a period not to exceed six months, covering the sale of the premises.

Section 5. Residential districts, area regulations.

In a Residential District no building or structure, except as hereinafter provided for garages or accessory buildings, shall be erected, altered or reconstructed so as to extend nearer than 25 feet to the right of way of any street or nearer than 7 feet to the lot line, except that on one side of a corner lot a building may be ten feet nearer the right of way line of the street than above prescribed. No dwelling shall be erected closer than 30 feet to the rear lot line.

In the case of existing structures on adjoining lots, no building shall be erected nearer to the street line of the street on which it faces, than the average alignment of existing buildings within 200 feet on each side of the lot.

Garages and accessory buildings shall not be permitted to be over 1 story or 15 feet in height. The garage or accessory building may be located on the rear corner of such lot in which case it shall be placed not closer than 3 feet from the lot lines, except that by mutual consent of the adjoining property owners the side line clearance may be waived, with the approval of the County Planning Board.

No dwelling shall be erected on a lot having a width of less than 60 feet or an area of less than 6000 square feet for the first family and an additional 3000 square feet for each additional family; nor shall the space occupied by the dwelling exceed 40% of the area of the lot, with 10% less coverage for each story over two in height to provide for minimum front, side and rear yard and court.

In the case of existing subdivisions in which a lot is or lots are less than the above 6000 square feet area requirements for one family, a building permit shall be allowed by the

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Planning Board, but in no case shall a residential structure be erected on a lot having a width of less than 40 feet or an area of less than 4000 square feet and no second family accommodation shall be erected thereon.

Section 6. Commercial districts.

Commercial Districts shall comprise all properties now occupied or used for Commercial purposes, including stores, offices, gasoline filling stations, and other buildings or properties devoted to the sale of goods or services. Where any parcel of land is occupied or used in part for commercial purposes as defined in this section, only the part so occupied or used at the time of adoption of this ordinance shall be construed to be included in a Commercial District. Any property lying adjacent to a Commercial District as herein defined, but not more than 200 feet therefrom, or any property lying directly across a street or highway from Commercial District may be included in the Commercial District by the County Board of Commissioners, whenever, in the opinion of the Board, the intended use of such property and any building or structures proposed to be erected or altered thereon will be in keeping with the character of the Commercial District.

Classification as a Commercial District shall not necessarily apply to areas used or occupied by temporary commercial activities.

At such times as Districts are definitely outlined by the adoption of a comprehensive zoning ordinance for Charleston County, areas classified as Commercial Districts under this section may be reclassified and the uses in such areas shall then become Non-Conforming uses and subject to the regulations for Non-Conforming uses.

No advertising signs other than those covered in Sections 2 and 4 will be allowed except those advertising products for sale on the premises. Not more than three such signs will be permitted on any structure. Such signs shall have an area of not more than 20 square feet each. Such signs shall be securely attached to the main business structure and must not project from the building over the right of way line.

Section 7. Commercial districts, area regulations.

In a Commercial District the Charleston County Planning Board may require an offset from the street line or lines and from the rear lot line, of not to exceed 25 feet for parking, loading and unloading and public utilities. In no case shall filling stations pumps or other equipment for the servicing of motor vehicles be erected or installed nearer than 10 feet to any street or highway right of way line.

No commercial building shall be erected on a lot having a width of less than 25 feet or an area of less than 3000 square feet.

Section 8. Industrial districts.

Industrial Districts shall comprise property now occupied or used for the purpose of manufacturing industry, or for any other purpose which is not noxious or dangerous to surrounding properties or which would not constitute or involve a menace or detriment to the health or welfare of the residents of such districts, or adjacent districts, or persons doing business therein. Subject to the approval of the County Board of Commissioners, such districts shall also comprise any properties whose future use or occupancy is comparable in character with any of the uses described in this section. The County Planning Board may require an offset from street lines, sides or rear lot line of not to exceed 25 feet for parking, loading and unloading, fire protection and public utilities.

No advertising signs other than those covered in Sections 2, 4 and 6 will be allowed, except that in case of industries, well back from the road, the Charleston County Planning Board may grant permission for placing on the particular structure a sign or signs, larger in area than 20 square feet, where such sign or signs will not unduly divert attention of travel from the road.

Section 9. Special restrictions.

No building or occupancy permit shall be issued for any of the following uses until and unless the location of such use shall have been approved by the Charleston County Planning Board:

- Tourist Camps, Tourist Courts or Trailer Camps
- Used Car Lots
- Salvage, Storage or Service Yards
- Gasoline and/or Oil Stations
- Public Garages
- Lunch Stands or Barbecue Restaurants
- Fruit and Produce Stands

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These uses are to be subject to such special restrictions as are prescribed by the Charleston County Planning Board and approved by the County Board of Commissioners, and these uses shall be so developed as to offset, enclosures, and parking space as not to impair public health, safety or the value of adjacent properties.

Section 10. Non-conforming uses.

Any lawful use of a building or structure or the lawful use of any land as existing and lawful at the time of the adoption of this ordinance, or any amendment thereto, may be continued, although such use does not conform to the regulations of the District in which such use is maintained, or the building, structure, or land located. No such non-conforming use may be re-established in any building or on any premises where such non-conforming use has been abandoned or discontinued for at least six months. Any non-conforming building or structure damaged or destroyed by fire, explosion, riot or Act of God, may be reconstructed and used as before any calamity, provided that the building be restored to its original value and provided the reconstruction takes place within twelve months after such calamity.

Section 11. Definitions.

Certain words and phrases used in this ordinance are defined as follows: Words used in the present tense include the future; the singular number includes the plural and the plural the singular.

Accessory Use: A subordinate used of a portion of the premises which is incidental to the main use of the premises, such as garage, stable, servants' quarters or storage for fuel.

Alley: A dedicated, platted and recorded right of way not over 30 feet in width between rear and/or side lines of lots and commonly used for service purposes to the rear portion of lots.

Boarding House: A dwelling used in the taking of boarders or the furnishing of meals to persons by the resident family, such persons residing in the County of Charleston on a permanent or semi-permanent basis.

District Line: The boundary lines between two zoning districts.

Dwelling: A house, designed for or occupied by one or more families as a residence.

Family: One or more persons living as a single housekeeping unit.

Hotel: A single building designed for or used for the furnishing of four or more sleeping quarters on a commercial basis for transients.

Lot: A parcel of land, on which a principal building and its accessories are placed, together with the required open spaces.

Non-conforming Use: A use that does not comply with the regulations of this ordinance for the districts in which it is located.

Rooming-House: A dwelling used by a resident family in the renting of rooms for the accommodation of persons on a semi-permanent basis and not for the accommodation of transients.

Tourist Court, Tourist Camp, Trailer Camp: (1) A group of two or more detached or semi-detached buildings containing guest rooms and/or apartments with automobile storage space, provided in connection therewith, used and/or designed for use primarily by automobile transients. (2) Land used or intended to be used for camping purposes by automobile transients.

Street: A passageway dedicated, platted and recorded as a street and commonly used for public travel.

Street or Alley Line: The dividing line between the right of way of a street or alley and a lot.

Subdivided Area: Two or more adjacent building sites in one or more separate lots or ownerships, within 500 feet of each other in the case of residential districts and 200 feet of each other in commercial districts.

Section 12. Enforcement officer, building permits.

The ordinance shall be enforced by the Planning Board through an appropriate person designated as the Building Inspector, who shall be employed by the Charleston County Planning Board with the approval of the County Board of Commissioners. In the unincorporated portions of Charleston County, existing on the date of adoption of this ordinance, no building, structure, or advertising sign, or part thereof, shall be erected, reconstructed, altered, enlarged, repaired, moved on the site, or removed without a building permit from the Building Inspector, and payment of prescribed fee; and the use of such

building or structure shall not be permitted until a certificate of occupancy is issued by the Building Inspector or in his name by a designated person.

All applications for building and occupancy permits shall be accompanied by sketch plot plan showing by dimensions the size and shape of the lot, location of lot, and location of proposed building and its accessory buildings on the lot, or the structure to be altered. The application shall state existing and intended use of each building or part thereof, the number of families or housekeeping units and such other information with regard to the lot and neighboring lots as may be necessary to provide for the enforcement of this Ordinance.

A minimum of \$1.00 shall be the fee for each building permit and 25 cents for each \$1000.00 of proposed or contracted building cost over four thousand dollars. Such fees shall be paid at the office of the County Treasurer before the permit shall be valid, and the County Treasurer shall not accept such fee unless the permit bears the approval of the County Planning Board.

Upon completion of construction or any work for which a permit has been issued request for the issuance of Certificate of Occupancy shall be the occasion of an inspection by the Building Inspector, who on finding all provisions of the permit complied with shall issue the certificate, for which no fee shall be charged. If the building or work is not in strict conformity with the permit but is in conformity with the zoning ordinance, an amended permit may be applied for and if issued, a certificate of occupancy may thereafter be issued.

Section 13. Advertising signs; general.

Permits shall be required by the County Planning Board for all advertising signs placed outside of buildings. If sign for which permit is granted is not erected within thirty days of date of permit, the permit shall be void. A sign placed within the open drive-in area of a filling station or other structure shall be considered located outside of a building. Advertising painted on a structure shall be considered an advertising sign and subject to these regulations:

1. All outdoor advertising signs must be kept neatly painted, properly braced and supported, and the foundation kept clear of weeds; and the Planning Board is authorized to remove any advertising sign which does not show this care. Any advertising sign that is a non-conforming use and that has been damaged by fire, storm or other cause to an extent of fifty per cent or more of its value, as appraised by the Planning Board, shall not be directed or replaced but shall be removed as directed by the Planning Board. A sign that is blown over shall be considered damaged more than fifty per cent if not restored by the owner within fourteen days, except that in case of extreme storms or hurricanes, the Planning Board shall have the right to extend the time in which a sign may be replaced.

2. All signs in connection with an abandoned business use shall be removed by the owner within 30 days after abandonment of such use. If the owner fails to remove all signs, after 15 days notice from the Planning Board to do so, the Building Inspector shall remove said signs at the owner's expense.

3. The Planning Board reserves the right to designate areas of Scenic Beauty and Historic Interest, in which no permits for advertising signs will be granted.

Section 14. Exceptions.

A use and occupancy permit shall not be required for minor structural alterations in buildings not involving a change in use of buildings or of land upon which they are located; nor shall a use and occupancy permit be required for the erection of barns, sheds or other outbuildings incidental to the operation of a farm; nor shall a use and occupancy permit be required for the erection or alteration of buildings or structures purely accessory to a principal building already in use in cases where the use to be made of such accessory structure is in strict conformity with the provisions of this ordinance; provided, however, that every case where the privilege is given to make such improvements or alterations without a building permit, every such improvement or alteration shall comply strictly with all other requirements of this ordinance and shall comply with the use required to be made of property in the several districts into which the County shall be divided. It is not the intention of the Board of Commissioners of Charleston County by the provisions of this section to relieve any person, firm or corporation of any of the penalties or obligations provided by Section 17 of the County Planning Act of the Legislature of South Carolina, approved March 14, 1942, or by any other Statutes in such cases made and provided.

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Nothing contained in this section of this ordinance shall be construed to permit the erection without a use and occupancy permit of sales stands, lunch stands, or other structures erected for commercial purposes. On any farm, the permit for a temporary stand for the sale of products produced on such farm shall be for a limited time only during the season when such products are marketed on the farm where produced.

Section 15. Board of adjustments, variances.

A Board of Adjustment is hereby established, which shall consist of three members, each to be appointed by the County Board of Commissioners. The term of office of the members shall be for three years except the terms of two of the members of the original board shall expire within two years; one within two years and one within one year of the date of appointment. An appointment to fill a casual vacancy shall be only for the unexpired portion of the term.

There shall also be appointed by the County Board of Commissioners two associate members of the Board of Adjustment who shall act in the place and stead of any regular member temporarily unable to act due to absence from the County, illness, interest in a case before the Board, or any other cause.

The Board shall elect one of its members as chairman and shall appoint a secretary. The secretary may be an employee of the County. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The members of the Board shall have the power to summon witnesses, administer oaths and compel the giving of testimony. A majority of the Board of Adjustment shall constitute a quorum and a majority vote of the members hearing an appeal shall be sufficient to determine the appeal. All meetings of the Board shall be open to the public.

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicate such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

The Board may adopt supplemental rules of procedure, not inconsistent with the provisions of the County Planning Act or the rules herein contained.

The Board of Adjustment shall hear and decide on appeals from orders, requirements or determinations made by the Building Inspector of Charleston County or his designated agent in the enforcement of these regulations, as provided in Section 12 of this ordinance.

Appeals to the Board of Adjustment may be taken by any officer, department, board or bureau of the County or person or persons having substantial interest in any decision of an officer, or agency, seeking to function under authority of or to enforce this ordinance.

Such appeals shall be taken as provided by rules of the Board of Adjustment and shall be evidenced by filing with the Secretary a written notice of appeal specifying the grounds thereof, and what modification of the decision is sought. The officer or agency from whose decision the appeal is taken shall forthwith transmit to the Secretary of the Board of Adjustment all documents pertinent to the decision appealed from. The filing of such appeal shall stay all proceedings in furtherance of the actions or decisions appealed from, until it shall be passed upon by the Board of Adjustment.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties, in interest and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney at law.

The Board of Adjustment shall have the following powers:

1. To hear and decide where it is alleged by the appellant that there is an error in any order, requirement, decision or determination made by an administrative official or agency in the enforcement of this act or of any regulations adopted pursuant thereto.

2. To authorize upon appeal in specific cases such variance from the terms of such regulations as will not be contrary to the public interest, where owing to special conditions fully demonstrated on the basis of the facts presented, literal enforcement of the provisions of the regulation will result in great practical difficulties or unnecessary hardship, and so that the spirit of the regulation shall be observed and substantial justice done. The Board may impose conditions in variance permits. Variances from the requirements of this Ordinance shall be permitted only by the Board of Adjustment.

3. To permit in appropriate cases, in harmony with the general purposes and intent of such regulations, a building or premises to be erected or used for public utility or public service purposes in any location which is reasonably necessary for public convenience and welfare.

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In exercising the above-mentioned powers such Board may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision and determination as ought to be made, and to that end shall have all the powers of the officer or agency from whom the appeal is taken.

Section 16. Penalty.

Any building or structure erected, constructed, reconstructed, altered or repaired, converted or maintained, or any structure or land used in violation of this Ordinance or the violation by any person or persons of any of the provisions of this Ordinance or amendments thereof, shall be a misdemeanor under the laws of the State, and the offender upon conviction shall be punished as for a misdemeanor, and any court of the county having jurisdiction of misdemeanor cases shall have jurisdiction to try such offenders and upon conviction to so punish them; and each day that any structure or land is used in violation of this Ordinance shall constitute a separate offense.

Section 17. Conflict, validity.

Any resolution or ordinance or parts of resolutions or ordinances adopted by the Commissioners which are in conflict with the provisions of this resolution are hereby repealed and declared null and void.

Should any section, clause or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the regulations as a whole or any part thereof, other than the part so declared to be invalid.

Section 18. Effective date.

This Ordinance being for the immediate and temporary preservation of health and general welfare, shall be in force upon its adoption by the County Board of Commissioners.

Clemson Agricultural College of S. C., The.

ADOPTED BY TRUSTEES OF THE CLEMSON AGRICULTURAL COLLEGE OF S. C.

Pursuant to § 6-401, S. C. Code 1952.

(Filed Secretary of State's office July 17, 1950.)

HEALTH REQUIREMENTS GOVERNING ADMISSION OF LIVESTOCK INTO SOUTH CAROLINA.

Regulation No. 1—General regulation.

1. No animal, including poultry or bird of any species, that is affected with, or that has recently been exposed to, any infectious or transmissible disease shall be imported into the State until written permission for such importation is obtained from the State Veterinarian.

2. An official certificate of health means a legible certificate made on an official form from the state of origin or from the United States Bureau of Animal Industry, issued by veterinarians in the employ of the United States Bureau of Animal Industry, or of the state livestock sanitary service, accredited veterinarians or licensed graduate veterinarians and approved by the recognized livestock sanitary official of the state of origin.

3. Livestock imported into the state shall be accompanied by an approved health certificate or permit, where required, which must be attached to the way-bill or shall be in the possession of the driver of vehicle or person in charge of livestock, if moved on foot. A health certificate or permit will be void after thirty days (30) days from date of issue.

4. The health certificate shall contain the names and addresses of the consignor and the consignee, with an accurate description or identification of the livestock. A copy of the approved certificate shall be forwarded to the State Veterinarian before arrival of livestock.

5. Livestock entering the state without a proper health certificate and not meeting the health requirements shall be held in quarantine and tested at owner's expense until released from quarantine by the State Veterinarian.

6. All trucks, railway cars and other conveyances used for the transportation of livestock and poultry shall be maintained in a sanitary condition.

7. The owners and operators of railway cars, trucks and other conveyances that have

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been used for interstate movement of any livestock infected with or exposed to an infectious or transmissible disease, shall be required to have such cars, trucks and other conveyances thoroughly cleaned and disinfected under official supervision. Proper notice of cleaning and disinfection of such certification shall be attached to the waybill or in the possession of the operator of truck or other conveyance.

Regulation No. 2—Covering the movement of horses, mules and asses into South Carolina.

Carolina.

1. These animals may be imported into the state when accompanied by a health certificate, issued by a licensed graduate veterinarian and approved by the proper livestock sanitary official of the state of origin, giving an accurate description of the animal or animals and certifying that the animal or animals as determined by a physical examination are free from any evidence of an infectious or transmissible disease and have not been recently exposed to any communicable, infectious or parasitic disease.

2. A copy of the approved health certificate shall be forwarded to the State Veterinarian before the arrival of the animals at destination.

3. No health certificate will be required for horses or mules of the United States Army or horses which are consigned to any race track or entering the state temporarily for exhibition purposes.

Regulation No. 3—Tuberculosis.

1. Tuberculosis. Cattle for dairy and breeding purposes, feeder cows, heifers and bulls of beef breeds, including calves and cattle for exhibition purposes, may be imported into the state provided they are identified as originating in (a) Tuberculosis-free accredited herds, or (b) Qualified negative herds from modified accredited Tuberculosis-free areas. If such herds have not passed a negative tuberculin test within twelve (12) months prior to entry, the cattle from these herds to be imported into the state shall be tuberculin tested within thirty (30) days prior to entry.

2. Feeder. Cattle of the beef breeds, which do not come within the Tuberculosis requirements, as provided, may be imported into the state for temporary feeding purposes, provided they are not under quarantine for Tuberculosis and have passed a negative tuberculin test within thirty (30) days of entry or consigned to a public stockyard under official supervision where they shall be tuberculin tested by an approved veterinarian at the expense of the owner.

3. Steers from herds not under quarantine for Tuberculosis may be imported without a tuberculin test, provided they are maintained separate and apart from dairy and breeding cattle.

4. Cattle which originate in a herd in which infection is disclosed are not eligible for entry unless such herd has passed three (3) consecutive negative tuberculin tests at least sixty (60) days apart without evidence of infection.

Regulation No. 4—Brucellosis or Bang's Disease.

1. Brucellosis (Bang's Disease). Cattle for dairy and breeding purposes, feeder cows, heifers and bulls of beef breeds, including calves and cattle for exhibition purposes, may be imported into the state, provided they come directly from:

2. (a) Herds officially accredited Brucellosis-free or qualified herds in modified accredited Brucellosis-free areas, in which all animals in the herd over six (6) months of age were negative to an official test for Brucellosis within twelve (12) months of entry, and the animals for entry were negative to an official blood test within thirty (30) days of the date of entry.

3. (b) Herds under Federal-State supervision for the control of Brucellosis, in which all animals in the herd over six (6) months of age were negative to an official blood test within three (3) months of entry, and the animals for entry were negative to an official blood test within thirty (30) days of the date of entry—such test not to be applied within thirty (30) days of the date of the previous herd test.

4. (c) Unvaccinated calves under six (6) months of age will not be required to be blood tested prior to entry, provided they are identified as the progeny and come directly from negative or accredited Brucellosis-free herds in accordance with paragraphs (a) or (b).

5. (d) Cattle vaccinated under Federal-State supervision with *Brucella abortus* vaccine between four (4) and eight (8) months of age which originate in herds in accordance with paragraphs (a) or (b), wherein all unvaccinated animals over six (6) months of age and all vaccinated animals over two (2) years of age are negative to one or

more official blood tests, may be imported into the state, provided they are negative to an official blood test within thirty (30) days of the date of entry.

6. (e) Cattle under eighteen (18) months of age vaccinated under Federal-State supervision with *Brucella abortus* vaccine between four (4) and eight (8) months of age, which originate in herds in accordance with paragraphs (a) or (b) may be imported into the state if not negative or without an official blood test, but the importation shall be at the request of the purchaser and subject to the approval and special written permit issued by the State Veterinarian.
7. A special written permit for the importation of vaccinated cattle, which are not negative to an official Brucellosis test, or have not been tested since vaccination, is necessary in order to meet the health requirements for the establishment and maintenance of Brucellosis-free herds and areas, and in order that such animals may be kept under supervision and their destination known.
8. (f) Cattle under eighteen (18) months of age vaccinated under Federal-State supervision with *Brucella abortus* vaccine between four (4) and eight (8) months of age, which originate in herds not meeting requirements under paragraphs (a) and (b), may be imported into the state if not negative or without an official blood test upon request of the purchaser, and shall be subject to the approval and special written permit issued by the State Veterinarian.
9. A special written permit for the importation of vaccinated cattle, which are not negative to an official Brucellosis test, or have not been tested since vaccination, is necessary in order to meet the health requirements for the establishment and maintenance of Brucellosis-free herds and areas, and in order that such animals may be kept under supervision and their destination known.
10. (g) Cattle for dairy and breeding purposes, feeder cows, heifers and bulls of beef breeds not provided for in above classifications may enter the state provided they were negative to an official test for Brucellosis within thirty (30) days prior to entry. Such cattle will not be eligible for additions to herds and quarantined areas under Federal-State supervision for the control of Brucellosis.
11. Tests for Brucellosis shall be conducted in a state laboratory, an approved laboratory or by a veterinarian approved by the proper livestock sanitary official of the state where the cattle originate. All tests shall be conducted by the standard tube agglutination method as approved by the U. S. Livestock Sanitary Association and Bureau of Animal Industry.

HEALTH CERTIFICATE—Cattle conforming to the preceding Tuberculosis and Brucellosis requirements shall be accompanied by a health certificate issued by an accredited veterinarian approved by the proper livestock official of the state of origin. The certificate shall contain a statement certifying that the cattle are free from any evidence of an infectious or transmissible disease, and have not been recently exposed to any communicable, infectious or parasitic disease. The certificate shall also contain the Tuberculosis and Brucellosis status of the herd from which the imported cattle originate, results of Brucellosis and tuberculin tests, description, age, tag or tattoo number, specific brand, registry name and number of each animal to be imported and names and addresses of the owner, consignor and consignee. The officially approved health certificate shall be forwarded to the State Veterinarian before the arrival of cattle at destination.

12. The health certificate for the importation of calves under six (6) months of age, as provided in paragraph (c), shall include the identification of the dam and sire and Tuberculosis and Brucellosis status of the herd in which the calves originate.
13. The health certificate covering importation of cattle vaccinated as calves under official supervision shall contain a statement as evidence of vaccination, age of cattle when vaccinated and date of vaccination.
14. Feeder Steers. Feeder steers may be imported without a Brucellosis test certificate, but shall be accompanied by a health certificate issued by a licensed graduate veterinarian and approved by the proper livestock sanitary official, certifying that the cattle are apparently free from communicable disease.
15. Steers upon arrival at destination shall be maintained separate and apart from all other cattle until moved for slaughter or other disposition, under official supervision.
16. Public Stockyards and Auctions—No cattle approved for entry into the state as free from Tuberculosis or Brucellosis shall be assembled, handled or confined in any public stockyard, livestock auction, sales' stable or yard, unless they are properly segregated in thoroughly cleaned and disinfected pens to prevent their exposure to infected cattle or premises.

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17. Immediate Slaughter—Apparently healthy cattle of strictly slaughter type to be used only for immediate slaughter may be imported into the state without a health certificate or tuberculin or Brucellosis test, provided such cattle are consigned for immediate slaughter to a recognized public stockyard where Federal, State or Municipal veterinary inspection is maintained, or shipped to a slaughtering establishment or slaughtering center that is approved and designated by the Bureau of Animal Industry, United States Department of Agriculture, and the State Veterinarian. Such cattle shall be slaughtered within ten (10) days after arrival at destination, except when the ten-day period is extended by special permit from the State Veterinarian.

Regulation No. 5—Cattle fever tick and scabies regulations.

1. Splenetic or Tick Fever. No cattle infested with ticks or exposed to tick infestation shall be shipped, trailed, driven or otherwise imported into the state for any purpose.

2. Cattle from Federal-State tick quarantined areas shall not be imported into this state except in accordance with regulations of the Bureau of Animal Industry, United States Department of Agriculture.

3. Scabies. No cattle affected with Scabies shall be shipped, trailed, driven or otherwise imported into this state for any purpose.

4. No cattle recently exposed to Scabies or from an area quarantined on account of Scabies shall be imported into this state except in accordance with the regulations of the Bureau of Animal Industry, United States Department of Agriculture.

Regulation No. 6—Sheep and goats.

1. Sheep and Goats. Goats for dairy and breeding purposes to be imported into this state shall be accompanied by a health certificate issued by a licensed veterinarian and a record of a negative test for Tuberculosis and Brucellosis—such tests to be conducted within thirty (30) days prior to importation. The health certificate shall include a description of each animal included in the shipment, giving age, sex, breed and color or markings.

Breeding and Feeder.

2. Scabies. Sheep and goats for purposes other than immediate slaughter that have been handled in stockyards, stock pens or on premises in public use for livestock shall not be imported into this state until after they have been dipped in accordance with the regulations of the Bureau of Animal Industry, United States Department of Agriculture, and while in transit, they shall be accompanied by a certificate certifying such dipping.

3. The health certificate covering importation shall include report of inspection by a licensed graduate veterinarian approved by the chief livestock sanitary official of the state of origin, indicating that the sheep or goats are not under quarantine for Scabies and are free from symptoms of Scabies or any infectious or communicable disease.

4. Sheep and goats that have not been handled in stockyards, stock pens or on premises in public use for livestock may be imported for purposes other than immediate slaughter, if accompanied by a health certificate issued by the licensed graduate veterinarian making the examination and approved by the chief livestock sanitary official of the state of origin, indicating that they are free from Scabies or symptoms of any infectious or communicable disease. Upon arrival at their destination such sheep and goats shall be unloaded directly from the car, truck, vehicle or conveyance into cleaned and disinfected vehicles or conveyances or upon clean and disinfected premises.

5. A copy of the approved health certificate shall be forwarded promptly to the State Veterinarian.

6. Immediate Slaughter. Apparently healthy sheep and goats may be imported into this state for the purpose of immediate slaughter when consigned directly to a recognized public stockyard or to a slaughtering establishment or slaughtering center that is approved and designated by the Bureau of Animal Industry, United States Department of Agriculture, and the State Veterinarian.

7. Such sheep and goats shall be accompanied by a waybill or certificate marked for immediate slaughter, and shall be slaughtered within ten (10) days after arrival at destination, except when the ten-day period is extended by a special permit from the State Veterinarian.

8. Transportation. All sheep and goats for purposes other than immediate slaughter shall be imported in conveyances that have been cleaned and disinfected immediately prior to loading animals.

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Regulation No. 7—Covering the interstate movement of swine for breeding and feeding purposes.

1. All swine imported into this state, except those for immediate slaughter, shall be accompanied by a certificate of health issued by a licensed graduate veterinarian, stating that they are free from any symptoms of infectious or communicable disease, and that each animal has been treated with a proper dose of anti-hog cholera serum within thirty (30) days of the date of entry into the state, or that each animal has been treated by the serum-virus method not less than thirty (30) days immediately prior to the date of entry into the state.

2. A certificate of health and a certificate of vaccination stating the ear tag number, date of vaccination, amount of serum or serum and virus used, approved by the livestock sanitary official of the state of origin, shall be furnished for all swine and shall be forwarded immediately to the State Veterinarian. A copy of the approved certificate of health shall accompany the swine while en route.

3. Purebred swine, if not ear-tagged, shall be identified by registry name and number and a description sufficient to identify the animal.

4. Immediate Slaughter. Swine may be imported for immediate slaughter without a certificate of health, provided they are consigned directly to a slaughter establishment or slaughtering center that is approved and designated by the Bureau of Animal Industry, United States Department of Agriculture, and the State Veterinarian.

Regulation No. 8—Covering the admission of poultry.

1. Poultry. Chickens for breeding purposes shall not be imported into this state unless they originate in negative tested flocks under the supervision of the pullorum control phase of the National Poultry Improvement Plan, or have passed a negative blood test for pullorum disease under the supervision of the proper state livestock sanitary official within thirty (30) days of entrance.

2. Chickens not meeting the above requirements, and other poultry, may be imported into the state, provided they are free from any evidence of an infectious or transmissible disease.

Regulation No. 9—Covering the shipment of dogs into the state.

1. All dogs imported into this state for any purpose, with the exception of those for exhibition purposes to be within the state for a limited period of time, shall be accompanied by a certificate of health issued by a licensed graduate veterinarian and approved by the proper livestock sanitary official of the state of origin, stating that the dog or dogs are free from symptoms of any infectious or communicable disease, did not originate within an area under quarantine for rabies and by reasonable investigation have not been exposed to rabies within 100 days prior to importation. A copy of the health certificate shall be forwarded promptly to the State Veterinarian.

Regulation No. 10—Wild animals.

1. Wild animals and semi-wild animals under domestication or in custody may be imported into the state, provided that a report of the number of animals is made to the State Veterinarian within ten (10) days, and that immediate opportunity for examination is afforded a representative of the livestock sanitary service to determine the health status of such animals.

2. Who may inspect.

Veterinarians in the employ of the Bureau of Animal Industry, United States Department of Agriculture, or of the state livestock sanitary service, accredited veterinarians or licensed graduate veterinarians approved by the recognized livestock sanitary official of the state.

3. Who may approve health certificates.

All health certificates for interstate shipment shall carry the approval of the chief livestock sanitary official of the state of origin.

OFFICIAL

State Veterinarian, Columbia 10, South Carolina.

APPROVED BY

The Board of Trustees of Clemson Agricultural College.

June 28, 1946.

RULES AND REGULATIONS

LIVESTOCK MARKETS.

Pursuant to § 6-345, S. C. Code 1952.

(Filed Secretary of State's office June 30, 1951.)

1. In accordance with the authority vested in the Technical Livestock Committee, any individual, firm, or corporation wishing to operate a market, on and after July 1, 1950, shall make written application for a permit to operate said market to the State Veterinarian, outlining the type of market, the day or days of each week auction sales, if any, will be held, and the facilities available for handling the various species of livestock offered for sale. All applications for a permit to operate a market shall be accompanied by a copy of the plans and specifications in detail of said market and premises.

2. Proper facilities for handling livestock shall consist of suitable pens in sufficient numbers for holding each species of animals. Separate pens shall be provided for animals which may be suspected of being infected with a contagious disease and also those which have been tested and show a positive reaction, indicating that they are infected with either Tuberculosis and/or Brucellosis.

3. A satisfactory chute, holding pens and other facilities necessary shall be available to restrain livestock for the purpose of examination, testing, and immunization against contagious diseases.

4. The premises including yards, pens, alleys, and chutes shall be cleaned and disinfected in an approved manner following each sale in order to destroy any type of material which might be infected with any agent suspected of having been exposed to or harboring the causative agent or agents of any contagious or infectious disease affecting livestock.

(a) All area within the sales barn shall be cleaned and/or raked to the earth, and all manure and refuse removed from the sales barn within 72 hours after each sale.

(b) Following the cleaning prescribed in paragraph 4 (a) the above area shall be sprayed with an approved disinfectant within 72 hours.

(c) All area in sales barn shall be properly drained.

(d) Bedding or the type of bedding used shall be optional.

5. The Clemson College Livestock Sanitary Department shall furnish the service of a veterinarian to attend regular weekly scheduled auction sales, and/or approve an accredited Deputy State Veterinarian, to assist in the inspection, examination, and treating of livestock, in order to control and prevent the spread of contagious and infectious diseases.

6. The operator of an auction market shall work out a satisfactory agreement between him, the seller and/or buyer to furnish sufficient help to properly hold the animals and to assist the veterinarian in examination, treatment, and testing of same.

7. The veterinarian in charge of the disease control work at an auction market shall be reimbursed by the purchaser of said livestock for expenses of materials used in connection with the treating of the animals at the time they are treated. Any owner wishing to sell cattle for dairy and breeding purposes shall present same at the auction market at least two hours before the time of the sale and pay the veterinarian fifty cents (50¢) per head for expenses in connection with testing each animal, approximately six months of age and over for Brucellosis at the time they are unloaded. Any cattle unloaded at the market and offered for sale for dairy and breeding purposes which fail to give negative results to the test for Brucellosis shall be branded and tagged by the veterinarian at the market and immediately sold for slaughter purposes or returned to the owner's farm under state quarantine.

8. Upon inspection of the livestock market by the Technical Livestock Committee, it is found that suitable facilities are available and put in use as outlined above, a permit for operation of said market shall be issued by the State Veterinarian.

9. The permits issued shall be valid for one fiscal year period ending next June 30 from date of issue, unless revoked by the Technical Livestock Committee for lack of cooperation in complying with the laws, rules and regulations.

10. The market operator shall display the said permit for operation in a suitable place for public inspection.

11. The livestock market operator, the Technical Livestock Committee, the State Veterinarian, or any of their employees, agents or authorized representatives, shall not be held responsible for or guarantee the health status of any animal examined, treated and/or tested and offered for sale or sold through the said market; provided further, that any dissatisfaction or controversy about the health status of an animal shall be the responsibility of the seller and buyer.

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12. Any person or persons, firm, or corporation who shall operate a livestock market contrary to the above rules and regulations, and who shall fail to cooperate with the State Veterinarian, his assistant, duly authorized representative, and/or the Technical Livestock Committee, in preventing, controlling, and eradication of contagious, infectious and communicable diseases of livestock, shall be subject to punishment in accordance with the laws, rules and regulations pertaining thereto.

Contractors Licensing Board.

ADOPTED BY THE SOUTH CAROLINA LICENSING BOARD FOR CONTRACTORS.

Pursuant to § 56-404, S. C. Code of 1952.

(Filed Secretary of State's office July 8, 1952.)

Section 1. For the purpose of carrying out the provisions of §§ 56-401 to 56-428, S. C. Code of 1952, there shall be elected from the members of the South Carolina Licensing Board for Contractors, which is hereafter referred to as the Board, a chairman and vice-chairman, the election of which shall take place at the April meeting of each year and the elected chairman and vice-chairman shall assume office immediately following the election. It shall be the duty of the chairman to call and preside over all meetings of the Board and perform such duties as may come within the jurisdiction of his office. It shall be the duty of the vice-chairman to function as chairman in the absence of the chairman.

Section 2. The Board shall elect a Treasurer who shall serve as Secretary and shall be known as Secretary-Treasurer. The Secretary-Treasurer need not be a member of the Board and shall keep a record of the proceedings of the said Board and shall receive an account for all monies derived from the operation of §§ 56-401 to 56-428, S. C. Code of 1952. The Secretary-Treasurer shall give bond in such sum as the Board shall determine with such surety as shall be approved by the Board. Said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all monies and other property as shall come into his hands. The Secretary-Treasurer shall have the power to employ the necessary clerical and legal service to assist in carrying out the provisions of this Article. The salary of such personnel shall be fixed by the Board. The Secretary-Treasurer shall also have the power to purchase whatever office equipment, stationery, rent, or other miscellaneous articles as may be necessary for the operation of the Board. Any expenditure from the funds of the Board shall be made by voucher, which shall be signed by the Secretary-Treasurer. Regular meetings of the Board shall be held during April and October of each year and additional meetings may be held at such other times and places as the Board shall deem necessary. Special meetings will be held at the call of the chairman at the request of any two members of the Board. Three members of the Board which shall include either the chairman or vice-chairman shall constitute a quorum.

Section 3. For the purpose of this Article, a general contractor is defined as one who for a fixed price, commission, fee or wage, undertakes to bid upon, construct, or superintend the construction of any building, highway, sewer main, grading or any improvements or structure where the cost of the undertaking is \$12,500 or more and anyone who shall bid upon or engage in constructing any undertaking or improvements above mentioned in the State of South Carolina costing \$12,500 or more shall be deemed and held to have engaged in the business of general contracting in the State of South Carolina.

Section 4. All persons, firms, or corporations desiring to be licensed as a General Contractor in the State of South Carolina shall make and file with the Board, at least thirty days prior to appearing before the Board for examination, a written application on such form as may be prescribed by the Board, said application to be accompanied by the sum of \$60.00. Before being permitted to take the examination the applicant shall furnish evidence through applicant's surety company of its ability to furnish bond for an amount in excess of the minimum established by those Rules and By-Laws for the limitation and classification applied for. It shall be the responsibility of the Board to ascertain from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability and integrity and

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that the applicant has not committed any act which if committed by any licensed contractor would be grounds under the provision hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant had not committed any act involving dishonesty, fraud, or deceit; provided, no applicant shall be refused the right to an examination without being given an opportunity, upon such notice, as may be prescribed by the Board to appear before the Board and produce evidence in support of his application. If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a co-partnership or corporation, or any other combination or organization, by the examination, of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, the license shall be cancelled immediately; however, if the contractor notifies the Board of such change, then in such event, the license shall remain in full force and effect for a period of thirty days thereafter, and then be cancelled, but the applicant shall then be entitled to a re-examination, all pursuant to the rules promulgated by the Board; provided that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Act.

Section 5. Under no circumstances shall a permit to bid, construct, or superintend the construction of any building or improvement of any kind costing \$12,500 or more be given prior to taking the required examination. The Board shall conduct a written examination of all applicants to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics or other similar matters pertaining to the contracting business. If the results of the examination of applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a General Contractor in the State of South Carolina as provided in said certificate, which may be limited into four classifications: (1) Highway contractor, (2) Building contractor, (3) Public Utility contractor, and (4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or craft, but which shall not include any operations now or hereafter under the jurisdiction for the issuance of license, by any Board or Commission pursuant to the laws of the State of South Carolina.

Section 6. Anyone failing to pass the examination as prescribed by the Board may again make application for the written examination without additional fee, or the applicant may withdraw his application and be refunded one-half ($\frac{1}{2}$) of the application fee submitted with the application. Should the applicant fail in any way to complete his application by either failing to furnish detailed information, such as financial recommendations, surety recommendations, or any additional information as required by the Board; or should the applicant fail the examination for the second time; or fail to take the required written examination after being given sufficient notice to appear for the second examination, the application fee submitted with the application will be forfeited. Should the applicant desire to be further considered by the Board, or appear for the third examination, the applicant shall make a new application and pay the required application fee. The original certificate of license and the annual renewal license as issued by the Board shall contain the signatures of the chairman and Secretary-Treasurer and shall be on display at the business location of the licensee at all times. The fact that an applicant can show that he is a graduate from a recognized college does not entitle him to license under any classification, but the entire record of applicant will be determined in considering his application.

Section 7. Classifications shall be under four fundamental branches of construction; namely; (1) Highway contractor, (2) Building contractor, (3) Public Utility contractor, and 4 Specialty contractor, or the Board may grant an unlimited and unclassified certificate to those applicants satisfying the members of the Board that said applicants are qualified and equipped to construct any type of project. Each applicant shall qualify under one or more of the above classifications or any part or parts thereof.

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Section 8. License shall be issued under the following limitation groups: (1) Limited Group—No one contract to exceed \$75,000; (2) Intermediate Group—No one contract to exceed \$300,000; and (3) Unlimited Group—Unlimited.

Section 9. Any person, firm, or corporation, desiring to be placed within a higher limitation group shall make application upon the prescribed form furnished by the Board thirty (30) days prior to being granted such an increase and shall furnish evidence of ability to furnish contract bond for such amounts as required in the higher limitation and classification applied for. Under no conditions shall a contractor be permitted to bid over his limitation prior to complying with the above instructions and being issued a higher limitation by the Board. Any one desiring to acquire an additional classification or limitation shall be entitled to an examination as prescribed by the Board.

Section 10. Renewals. Renewal of general contractors license certificate may be effected during the month of January following the expiration date, December 31st, of the year issued, by filing proper application and financial statement on the forms then prescribed by the Board, and payment of a fee of \$60.00. Should the applicant desire change in classification or limitation of his license, he should so inform the Board in order that he may be notified as to the date of the first quarterly examination following such notification in order that he may have a certified representative of his firm appear for examination under the classification and/or limitation desired.

Section 11.—Any person, firm or corporation not being duly authorized who shall attempt to practice general contracting in this State, except as provided for in this Act, and any person, firm or corporation presenting or attempting to file as his own the license certificate of another or who shall give false or forged evidence of any kind to the Board or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked license, or any one licensed hereunder, allowing another to use his license in any way shall be deemed guilty of having violated § 56-426, S. C. Code of 1952, and it shall be the duty of the Secretary-Treasurer of this board to report same to the prosecuting attorney, in the county where any violation occurs, and to assist said attorney, solicitor or others in prosecuting any case which may come to his notice.

Section 12.—It shall be the duty of the members of this Board to see that all architects and engineers preparing plans and specifications for work to be constructed in the State of South Carolina shall include in their invitations to bidders and in their specifications a copy of this Act or such portion thereof as is deemed necessary to convey to the bidder, whether he is a resident or non-resident of this State and whether a license has been granted to him or not, the information that it will be necessary to show evidence of a license under proper classification and limitation before his bid may be opened or considered.

Section 13.—The appointment of a receiver for bankruptcy proceedings of anyone licensed under this act shall be considered evidence sufficient for revocation of license.

Section 14.—It shall be the duty of engineers, architects, firms, corporations and others receiving bids from general contractors as construed under the act for licensing contractors in South Carolina, to notify the Secretary-Treasurer of the Board at least 24 hours in advance of the date for receiving bids. The approximate cost and nature of the work shall be included in the notification. Immediately after the contract is awarded, the Board shall be notified giving name of contractor and the amount of the contract.

RULES AND REGULATIONS

Cosmetic Art Examiners, State Board of.

ADOPTED BY THE SOUTH CAROLINA STATE BOARD OF COSMETIC ART EXAMINERS.

Pursuant to §§ 56-471, 56-472, S. C. Code of 1952.

(Filed Secretary of State's office October 5, 1945.)

For Recognized Schools and Colleges of Beauty Culture in South Carolina.

GENERAL INFORMATION:

The following is the approved curriculum for a course consisting of 1,000 hours or more governing schools and colleges of beauty culture, in the State of South Carolina, approved by the South Carolina State Board of Cosmetic Art Examiners.

The office of the Board is always available for information to any school or student concerning the requirements of this Board, as well as for information concerning the law.

This Board, in answering inquiries by prospective students, will submit a list of only the approved schools without comment.

No school or college of beauty culture shall operate within this State, until permission has been granted by the Board, and an inspection made.

TEACHING AND INSTRUCTING STAFF:

All teachers in schools or colleges of beauty culture must be registered cosmetologists with two years' experience in Cosmetology, must have attended a Teacher's Training Course and must pass a teacher's examination, prescribed by the Cosmetic Art Board.

The Board shall not consider eligible for the teacher's examination a person who does not have a high school education.

No student will be accepted for examination from schools where instructors' health certificates, certificates as registered cosmetologists and teacher's certificates are not up-to-date, in order, and in full force. No school of beauty culture shall be approved by this Board, that does not provide at least one instructor of the first twenty students, or fraction thereof; two instructors if the number of students enrolled in the class shall be more than twenty and less than thirty-five. If the number of students enrolled in the class shall exceed thirty-five, then one instructor for each twenty students enrolled shall be employed.

An instructor shall be in the study and classroom of a school during all class and study hours, and will be required to supervise all practice student work.

Every instructor in an accredited school shall devote his or her entire time, during school or class hours, to that of instructing the students, and shall not apply her time to that of private or public practice for compensation, or permit students to instruct or teach co-students in the absence of a teacher.

The Board requires that a duly licensed physician must be on the consulting faculty of every school.

REGISTRATION:

Students must be registered with the Board not later than ten (10) days after entering school.

LIMITATIONS:

A school is not permitted to operate as a beauty shop.

No school or college of beauty culture shall permit its students to practice beauty culture upon the public under any circumstances except by way of clinical work upon persons willing to submit themselves to such practice after having first been properly informed that the operator is a student.

A sign to read, "SCHOOL OF BEAUTY CULTURE. WORK DONE EXCLUSIVELY BY STUDENTS", in letters large enough to be read the length of the room, is to be displayed in the reception room and workrooms.

No school or college of beauty culture shall, directly or indirectly, charge any money whatsoever for treatment by its students or shall advertise in any way except for students.

Practical performance and attendance records must be kept for each student. This record is to be posted daily from the "Students Daily Reports."

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All of these records must be kept up-to-date for checking by State Board of Cosmetic Art Examiners' or assistants and a duplicate must be filed every two (2) months with the Cosmetic Art Board.

Before graduation, it shall be the duty of each recognized school to give a final examination to every student who is a candidate for a diploma, and each student must make a passing grade of 75 or more. This grade, together with a daily practical performance and attendance records, and application for examination, must be filed with the Board, together with the required fees, before examination date, for permanent records.

Students failing the State Board Examination will be required to serve at least eighty (80) hours further training on each subject failed before standing a reexamination.

No permits shall be issued to students to practice for compensation although they have finished their course, until they have passed the apprentice examination before the Board, and received their certificates as a registered apprentice.

SANITATION:

Sanitary rules and regulations applicable to beauty shops shall apply to beauty schools.

If a beauty school is located with some other business, separate rooms must be provided for beauty school work. Every school conducted in connection with a home shall provide a separate entrance to such school which shall not open from any living quarters of the house or any part of the house, other than the entrance of the building.

CURRICULUM:

Each student is required to pass an examination in the following subjects:

Shampooing.

Permanent waving.

Hair dyeing.

Scalp treatments.

By hand.

By electricity.

Sterilization and disinfection.

Haircutting.

Marcel waving.

Pin curling.

Finger waving.

Manicuring.

Eyebrow and eyelash dyeing.

Anatomy—skin and appendages, muscles, nerves, circulation of the face, neck, arms and hands.

Salesmanship and management.

Citizenship and its relation to the South Carolina Law governing beauty operators, shops, and schools.

Facials:

(a) Manipulations:

By hand.

By electricity—Extreme caution and careful training must be observed in use of electrical devices, and no light machine or more than 500 watt voltage must be used.

(b) Make-up:

Eyebrow shaping, use of rouge and powder, etc.

Beauty Shop Ethics.

The above work shall be given to the students through practical demonstration and recitations. These recitation periods shall include lectures, questions, answers, and written examinations. All papers written shall be carefully graded and returned to the students in order that they may see their errors and a permanent record of these grades kept at all times by the schools.

EQUIPMENT:

(A) General Equipment:

No school will be approved by the Board, having less than the following equipment: Practice room equipment for 20 students, or less—number of pupils above 20 shall be furnished the same equipment in ratio of the equipment required for 20:

RULES AND REGULATIONS

- 3 Shampoo bowls.
- 3 Hair dryers.
- 1 Facial chair.
- 3 Manicure tables with a liquid sterilizer.
- 6 Marcel stoves.
- 1 Wall plate.
- 1 Therapeutic light installed to permit free use of operator's hands.
- 1 Wet sterilizer sufficiently large enough to accommodate the instruments used by 20 students.
- 1 Large dry cabinet for sterilized instruments.
 - Permanent waving machines: 1 croquignole and 1 spiral or 1 combination.
- Sufficient trays for facial supplies.
- Covered containers for hairpins.
- Waste containers.
- Sufficient blocks with wefts of first quality hair for use in practicing marcelling, finger-waving, and permanent waving. These blocks must be placed on firm stands.
- Electrical appliances for the proper teaching of beauty culture.
- (B) Study and Classroom Equipment:
 - A separate recitation and study room is required with the following equipment:
 - Sufficient charts, blackboards, to teach all subjects of beauty culture.
 - Sufficient chairs preferably with arm rests for classroom work, such as taking notes.
 - Room shall be entirely separate from practice room.
- (C) Dispensing and Sterilizing Room Equipment:
 - Each school is required to furnish a supply or dispensing room in which each student may obtain actual experience, for a period of one to three weeks, as indicated by the course of instruction. The student will be directly responsible to the instructor.
 - Soap dispenser.
 - Waste container.
 - Record book to be signed by the student, on receiving supplies and on returning or accounting for same.
 - Supply of clean linens, neck cloths and strips, etc.
 - Bottles and containers in use distinctly and correctly labeled.
 - Cabinet for accessories.
 - Measuring cups for preparation of solution from stock supplies.
 - Various solutions and preparations used.

LIBRARY:

The required books:

"Basis of Light Therapy", by Herman Goodman, can be secured from Medical Lay Press Co., 18 E. 89 St., New York, N. Y.

"Anatomy and Physiology," by Kimber & Gray, published by Macmillan Co., Atlanta, Ga.

"A Treatise on Permanent Wave Burns", by Noble M. Eberhart, M.D., published by New Medicine Publishing Co., 25 E. Washington St., Chicago, Ill.

"Fundamentals of Electricity and Light, for Beauty Culture Profession", by Noble M. Eberhart, M.D., published by New Medicine Publishing Co., 25 E. Washington St., Chicago, Ill.

"Medical Dictionary", by P. Gould, published by Blakiston Sons & Co., Inc., 1012 Walnut St., Philadelphia, Pa.

"American Red Cross First Aid Textbook", American Red Cross.

"Principles and Practices of Beauty Culture", by Florence E. Wall, published by Keystone Press, N. Y.

"Principles of Professional Beauty Culture", by Herman Goodman, M.D., published by McGraw-Hill Book Co., New York, N. Y.

"Histology", by Maximow.

"Webster's Standard Dictionary."

Charts may be obtained at the following addresses:

American Hairdressers, 270 Washington St., Brooklyn, N. Y.

Modern Anatomy Charts, Modern Beauty Shop Magazine, 608 Dearborn St., Chicago, Ill.

Adair Beauty Charts, Adair Publishing Co., P. O. Box 1626, Miami, Fla.

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It is not expected that the students will read all or any one of these library books. However, it will be necessary for them to be acquainted with those sections that are basic to the study of beauty culture.

Sanitary Rules and Regulations

FOR ALL COSMETOLOGY ESTABLISHMENTS OPERATING IN SOUTH CAROLINA

ALL BEAUTY SHOPS, SCHOOLS AND COLLEGES OF BEAUTY CULTURE, OR OTHER HAIR-DRESSING ESTABLISHMENTS SHALL BE OPEN FOR INSPECTION AT ALL TIMES DURING BUSINESS HOURS TO ANY MEMBERS OF THE SOUTH CAROLINA STATE BOARD OF COSMETIC ART EXAMINERS OR ITS AGENTS OR ASSISTANTS

1. Floors: Floors must be kept mopped or waxed at all times, and walls, furniture and other fixtures must be kept clean, free from dust and in good repair at all times.

2. Equipment: All Beauty Shop equipment must be kept clean at all times, including permanent wave machines, lavatories, dryers, shampoo-chairs, shampoo-boards, booth-dresserettes, manicuring-tables, and all permanent waving cabinets, including protectors, rods, and felts.

3. Permanent Waving Supplies: Permanent wave pads may be used once only, and must be discarded or destroyed as soon as they are removed from the rods. Used permanent wave pads, flannels, or sachets shall not be in or around any shop or school, and failure to dispose of used pads, flannels and sachets shall be a violation of these rules and regulations and are grounds for suspension of license.

4. Sterilizers: Every Beauty Shop shall have at least one wet sterilizer containing an authorized antiseptic to be used for sterilizing instruments, equipment, etc. Every beauty shop shall have at least one dry cabinet, containing a dish filled with formalin containing 40% formaldehyde. This cabinet to be used for storage or sterilized instruments, equipment, etc., only.

Combs, brushes, glass or metal articles must be thoroughly cleansed after each using with soap, and hot water, and covered in a 1-1000 bichloride solution, 5% phenol, 70% alcohol, 10% lysol, 20% formaldehyde, or other established and approved germicidal solution, removed and rinsed in water, dried and placed in an air-tight cabinet. Glass or metal articles, which cannot be boiled, must be cleansed in soap and water, wiped in a 70% solution alcohol, or other recognized antiseptic, and kept in an air-tight, dry cabinet.

5. Towels: All clean towels must be kept in closed cabinets, until ready for use. All soiled towels must be kept in a container, or laundry bag. Every operator shall use separate and clean towels for each patron.

6. Manicurists: A manicurist is required to supply herself with tincture of iodine U. S. P. to be used on skin of patient if it should accidentally be broken during the process of manicuring. She must cleanse her instruments with soap and water, and immerse in 70% alcohol for at least ten minutes. The alcohol for this purpose may be kept in a covered container of such size as will accommodate the instruments. When not in use, she must dry instruments and keep in a cabinet sterilizer. Extra buffer covers and an additional set of instruments shall be available to provide for adequate sterilization.

7. Hot and Cold Water: Every owner of any beauty establishment must supply hot and cold water in such quantities as may be necessary to conduct said beauty establishments in a sanitary manner.

8. Capes, Neck-Strips or Freshly Laundered Towels: All haircloths or capes must be kept clean and when used in cutting the hair, shampooing, etc., a paper neck-strip or freshly laundered towel shall be placed around the neck, so as to prevent the hair-cloth from touching the skin.

9. Appearance of Operator: All operators shall wear washable outer linen apron, uniform, or coat, which shall be kept clean.

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10. General Conditions: (a) The use of the beauty parlor as a living, dining, or sleeping apartment is prohibited. If a beauty parlor is located in a private residence, or in connection with some other business, a separate room must be provided for beauty parlor work. Every shop conducted in connection with a home shall provide a separate entrance to such shop, which shall not open from any living quarters of the house or any part of the house, other than the entrance to the building.

(b) All shops and schools must be properly ventilated.

(c) No owner, or manager, of a beauty establishment shall permit any person suffering with communicable disease, or from venereal disease in a communicable form, to work in said beauty establishment. Blood test necessary. Blood test given by State Board of Health without charge.

(d) No person employed in a beauty establishment shall use the headrest of any operating chair under his or her control, unless the headrest is covered, and which cover has been properly sterilized since last being used; or covered with sanitary paper, or towel, which must be renewed after each patron.

(e) Every person engaged in the beauty establishment must thoroughly cleanse his or her hands immediately before serving each patron.

(f) All creams, lotions and other cosmetics used for patrons must be kept in clean and closed containers.

(g) Open power boxes, rouge and lipstick must not be used in a reception room for patrons. The powder must be in shakers or similar receptacles. Individual lipstick and rouge shall be used.

(h) Lotions, or fluids, must be poured into a clean glass, or other sterilizable container, and applied to patrons by means of cotton or other sterile methods.

(i) Creams and other semi-solid substances shall be dipped from the container with sterile article or spatula. Removing such substances with the fingers is prohibited.

11. License Posted: All Beauticians must display in a conspicuous place their license to practice cosmetology in the State of South Carolina.

12. Rules Posted: A copy of these rules and regulations must be posted in Beauty Culture Shops, Schools, Colleges and other hair-dressing establishments.

13. Grade Certificate Posted: The inspectors will post in a conspicuous place in the shop a certificate denoting the grade of the shop under these rules and regulations, which shall remain as posted until removed under the direction of the State Board of Cosmetic Art Examiners. Shops to be graded as follows:

- (a) GRADE A 90-100
- (b) GRADE B 80- 89
- (c) GRADE C 70- 79

The willful and continued violation of these rules and regulations adopted by the State Board of Cosmetic Art Examiners, and approved by the State Board of Health, constitutes a misdemeanor, punishable upon conviction by a fine of not less than \$10.00 and not more than \$50.00, or imprisonment for not less than ten days and not more than thirty days. Section 56-481, S. C. Code of 1952.

Dental Examiners, State Board of.

ADOPTED BY THE SOUTH CAROLINA BOARD OF DENTAL EXAMINERS.

Pursuant to § 56-555, S. C. Code of 1952.

(Filed Secretary of State's Office September 7, 1949.)

1. No school for the instruction of dental hygienists shall be approved by the South Carolina State Board of Dental Examiners unless such school shall conform in its entirety to the curriculum set forth by the American Council on Dental Education of Hygienists of the American Dental Association, and shall also have been classified by the said Council as a grade "A" school.

2. Such schools shall be approved by the Board upon presentation before it of such proof as it shall require that the said schools conform to the requirements set forth in Rule 1, and shall continue to be approved schools only so long as such conformity is shown.

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Education, State Board of.

ADOPTED BY THE SOUTH CAROLINA STATE BOARD OF EDUCATION.

Pursuant to § 21-45, S. C. Code of 1952.

(Filed Secretary of State's office July 3, 1952.)

General.

1. State superintendent.

The State Superintendent of Education shall, in addition to his duties as secretary, be the executive officer of the State Board of Education.

2. Board meetings.

The board shall meet monthly on the third Friday and at such other times as it is necessary. Special meetings may be called either by the chairman, executive officer, or by request of a majority.

3. Official minutes.

The secretary shall keep a record of the actions of the board in a book provided for that purpose. This book shall be the official record of the board meetings.

4. Order of business.

The order of business may be specified in the call for the meeting; if not so specified the order shall be as follows: Calling to order, adopting of minutes of the previous meeting, unfinished business, reports of committees, report of the chairman, report of the secretary, and new business.

5. State department personnel.

Each employee of the State Department of Education shall, as a condition of his employment, be nominated by the State Superintendent of Education and approved by the State Board of Education.

6. Vacancies in counties.

Any vacancies on county boards of education or in county offices of education which the State Board of Education is empowered to fill shall be filled by direct vote of the board.

7. Health and safety.

All public schools shall teach health and safety in all grades in accordance with programs approved by the State Department of Education.

8. Age of enrollment.

Any pupil becoming six years of age on or prior to November 1 in any school year may be enrolled at the beginning of that school session. No pupil reaching the age of six years after November 1 may be enrolled in any public school during that year.

9. Length of school month.

The state aid payments to schools shall be paid on the basis of twenty (20) days of actual class instruction per month. No days devoted to organization, holidays, etc., shall be included. Any school averaging less than twenty (20) days per school month shall have a proportionate amount of state aid deducted.

10. Length of school day.

The minimum length of the scheduled school day shall be five hours in order to qualify for state aid.

High School Regulations.

1. Application for accreditation.

Each year all high schools desiring to be accredited for the first time and all accredited high schools desiring to be continued on the accredited list must file application with the state high school supervisor by November 1 on application blanks furnished by the state high school supervisor. The State Board of Education determines whether or not a school will be placed on the list of accredited schools, dropped from the list, or placed on probation. This action determines the accreditation status of the school for the school year following the school year in which the application for accreditation is submitted.

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2. Rating of non-public high schools.

Non-public high schools are not accredited by the State Board of Education and are not permitted to award state high school diplomas. Where a non-public high school desires the rating of "approved", it may submit to the state high school supervisor an application for the rating. The application form used is the same as that used by a public school applying for accreditation, and the standards for these schools are the same as for accredited public high schools, except that the non-public high schools shall not be required to have their teachers certified by the Division of Teacher Education and Certification. A non-public high school, however, may be removed from the list because of sub-standard instruction.

3. Types of high schools.

The State Department of Education recognizes three-year, four-year, five-year, and six-year high schools. From the standpoint of the organization for all grades under a twelve-year program, this means that a school system may operate under any one of the following plans provided the plan elected is approved by the State Board of Education: 6-3-3, 8-4, 7-5, 6-6. Specific approval of the State Board of Education is necessary before a school system may transfer from one type of organization to another. Where the eighth grade and/or the seventh grade is included in the high school organization, such grade or grades must be an integral part of the high school. Units of credit toward graduation, however, may not be earned below the ninth-grade level. In a 6-3-3 plan, where grades 7, 8 and 9 are included in a separate school unit, this unit may be accredited as a junior high school. (See Standards for Accredited Junior High Schools.)

4. Qualifications of the high school administrator.

An accredited high school is required to have at its head a capable administrator who is qualified to direct the program of the school in its varied aspects, and who holds whatever type of certificate required by the State Board of Education for an administrator in his position.

5. Withdrawal of state aid under certain conditions.

State support may be withdrawn from any high school after two months' notice to the local board for inefficient teaching, for the continuance of an inadequate school program, or for lack of attendance.

6. Reports required by the state board of education.

Every high school shall render with reasonable promptness such reports as are required by the State Board. All such reports are to be countersigned by the secretary of the local school board. Any school knowingly making an incorrect report in any matter affecting the standing of the school or its appropriation thereby subjects itself to being penalized by the State Board.

7. Guidance activities.

Time devoted to guidance activities in any high school may be regarded as the equivalent of time devoted to class instruction, provided that the program of guidance has been approved by the state high school supervisor.

8. Adequate physical plant required.

A high school accredited by the State Board of Education shall be housed in a physical plant that is adequate to the needs of the school. The plant should be so constructed and so kept and operated that the comfort, safety and health of pupils are safeguarded. A school that has inadequate housing facilities, unsanitary conditions or questionable provisions for the safety of its pupils may thereby place its accreditation in jeopardy.

9. Qualifications of high school teachers.

A high school teacher is required to hold at least the bachelor's degree from an accredited college or university and must be certified to teach the subjects assigned to him. Under certain conditions a teacher may be granted a one-year permit to teach subjects outside his fields of specialization. When such a permit is granted, the approval of the state high school supervisor is necessary for allowing pupils credit for work done under the permit teacher.

10. Minimum enrollment.

The minimum enrollment required in an accredited high school is determined by the

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minimum number of teachers required to carry on a minimum program of subject offerings.

Present high schools with an enrollment less than a sufficient number to qualify for four full-time teachers in the upper four grades in high school will be evaluated as quickly as possible and those whose continuance cannot be justified because of natural barriers, distance, or other peculiar circumstances will be dropped from the accredited list as soon as sufficient time has been given to make necessary consolidations and transitions.

High schools having an enrollment sufficient to qualify for four teachers but not having a sufficient number to qualify for five, and meeting other standards, will be carefully reviewed and continued accreditation will be contingent upon distance from other existing high schools, natural barriers, and other peculiar circumstances which might convince the State Board of the need for their existence.

(Filed Secretary of State's office July 3, 1952.)

No class in a beginning subject may be permitted with an enrollment of less than ten (10) pupils and no subject requiring of students enrolled a prerequisite of a year's work in that subject may be offered unless five or more students are enrolled.

11. Minimum number of teachers.

The minimum number of teachers required for fully carrying out a program in an accredited high school, for each classification, is as follows:

three (3) year high school six (6) teachers
four (4) year high school seven (7) teachers
five (5) year high school eight (8) teachers
six (6) year high school nine (9) teachers

Note: Two of the above teachers may be off-the-enrollment teachers in vocational education or other special subjects.

A teacher-librarian employed in a high school operating with minimum staff may be assigned to library duty for at least as much time as the library is required to remain open under direct supervision of teacher-librarian, provided this does not jeopardize the instructional program and provided this arrangement is approved by the state high school supervisor. Otherwise, additional staff should be employed. (See Library Standards.)

The assignment of a disproportionate number of teachers to the high school may endanger the accreditation of the high school if such allocation of teachers discriminates against the elementary school to the point of jeopardizing its instructional program.

12. A teacher in an accredited high school may not be permitted to teach more than six regular class periods per day. A maximum of five periods per day is recommended. The maximum load from the standpoint of pupil-periods is 750 per week. In calculating pupil-periods, the number of pupils supervised in a study period should be divided by two. Home-room periods and other extra-curricular activities should not be counted in calculating teacher load.

13. Pupil load.

The normal pupil load is considered to be the amount of work required of classes, the total of which carries four units of credit. A student who ranks in the upper twenty-five per cent of his class, from the standpoint of ability and achievement, may be permitted to earn five units in one school year, provided the administrative head of the school and the parents of the student consider that such a plan will serve the best interests of the student. A senior who needs more than four units to graduate may be allowed to carry four and one-half or five units, provided his schedule may be arranged in such a way that by permitting him to carry a load heavier than normal he may graduate at the end of the current school year. In no case may a student, senior or otherwise, earn more than five units in one school year. One additional unit may be earned in summer school however. No credit may be allowed toward graduation for work done on a level below the ninth grade. A student, however, classified as an eighth grader, who is repeating a portion of the work required in the eighth grade but who has already completed one or more eighth grade subjects may be permitted to take one or two courses with a ninth grade class, provided he is considered qualified to do advanced work in such subjects. For such work he may be allowed high school credit. Not more than two such units may be allowed in any one school year. Moreover, it may be possible for an exceptionally bright student in the eighth grade to take a ninth grade subject for one unit of credit. Only those in the upper twenty-five per cent of a class may be allowed this privilege. In

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certain cases, students who desire subjects not offered because of insufficient enrollment may be allowed credit for such subjects studied under direct supervision of a member of the teaching staff, provided the plan is recommended by the principal and approved by the state high school supervisor. Credit earned in this manner, or in any other approved manner, must be included in determining the maximum pupil load.

14. Minimum length of school term.

All accredited high schools are required to operate for a term of thirty-six five-day weeks, or 180 days.

15. Minimum length of school day.

The length of the school day should not be less than five hours (300 minutes), exclusive of recesses, lunch periods, assemblies, home room and other extracurricular activities.

16. Minimum length of class periods.

The minimum length of a regular class period is forty-five minutes. The minimum length of science periods (biology, chemistry and physics) is fifty minutes, unless additional periods are scheduled for laboratory work. The minimum length of class periods in vocational agriculture, vocational home economics, trades and industries, diversified occupations and distributive education are prescribed by the State Board of Education.

17. Library standards.

Books and Periodicals.

1. Each accredited high school must have five library books per pupil exclusive of government documents and textbooks. No accredited school may have fewer than 500 books. Books are to be selected from the list prepared by the library committee of the State Department of Education or some other lists approved by the State Department of Education.

2. Periodicals and Newspapers.

a. For schools having enrollments of 200 or fewer pupils—one daily newspaper and from 5 to 15 periodicals suitable for pupils' use.

b. For schools having enrollments of more than 200 pupils—two newspapers and one periodical for each 20 pupils up to a maximum of 50 periodicals suitable for pupils' use.

c. For all schools—subscription to the Readers' Guide to Periodical Literature or to the Abridged Readers' Guide to Periodical Literature.

Appropriation.

Each accredited high school shall appropriate and spend annually for books, periodicals, and supplies, exclusive of salaries, a sum of money based on the schedule listed below:

1. Enrollment of 200 or fewer pupils—an annual appropriation of \$1.50 per pupil.

2. Enrollment of 201 to 400 pupils—an annual appropriation of at least \$300 plus \$1.25 per pupil above 200 pupils.

3. Enrollment of 401 to 1000 pupils—an annual appropriation of \$550 plus \$1.00 per pupil above 400 pupils.

4. Enrollment of more than 1000 pupils—an annual appropriation of \$1150 plus \$.75 per pupil above 1000 pupils.

Librarian.

1. For schools having enrollments of 100 or fewer pupils, a teacher-librarian with at least twelve semester hours in library science in an approved library school devoting not less than two class periods per day to library service.

2. Enrollment of 101 to 200 pupils—teacher-librarian with at least twelve semester hours of library science in an approved library school devoting not fewer than three class periods a day to library service.

3. Enrollment of 201 to 400 pupils—teacher-librarian with at least eighteen semester hours of library science in an approved library school devoting not fewer than four class periods a day to library service.

4. Enrollment of 400 or more pupils—full-time librarian with same qualifications and educational background as teachers including 24-30 semester hours of library science in an approved library school.

5. Schools employing teacher-librarian must keep the library open all day under supervision, using student help or teachers. The teacher-librarian shall be responsible for training all library assistants.

6. It is recommended that when the high school and elementary school are in the same building or at the same location, a library be set up to serve both groups. The total

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number of pupils in the high school and the elementary school will determine the placement on the standards sheet.

7. It is recommended that the librarian be employed and paid for at least an additional month beyond the school term.

Organization.

All high school libraries shall keep an accurate accession record, shall have a shelf list, a card catalog, and an adequate loan system.

Course in Use of Library.

In each accredited high school a minimum of ten lessons in the use of the library shall be given. It is recommended that these be integrated with the classroom work and that they be the joint responsibility of the librarian and the teacher.

Housing and Equipment.

Libraries may be housed in either library-study hall rooms or in special library rooms equipped with tables, chairs, shelves, loan desk, magazine shelves, bulletin board, catalog case, vertical files, and other essential office furniture. The room should be large enough to accommodate one-tenth of the high school enrollment, allowing 25 square feet of floor area per person. A workroom with running water is essential. It is recommended that in future buildings the reading room be large enough to seat the largest class plus 20 in schools with an enrollment of less than 300 pupils and 15% of the enrollment in schools with an enrollment of 301 or more. It is further recommended that provision be made for a conference room.

Function.

For purposes of accreditation of high schools, the functioning of the library shall be given equal weight with the quantitative standards set up in the preceding sections of these library standards.

18. Requirements for graduation.

1. In order to receive a state high school diploma a pupil must earn sixteen (16) units of credit, distributed as follows:

English	3 units
United States History	1 unit
Other Social Sciences	1 unit
Mathematics	1 unit
Natural Science	1 unit
Second Major	3 units*
Minor	2 units*
Electives	4 units

* Units required in major and minor groups may include credit earned on subjects specifically required. Major, minor, and electives subjects are to be selected from the list of minimum subject offerings. (See Suggested Program of Studies for South Carolina High Schools.)

Note: Prior to the school year 1953-54 the specific requirements for graduation remain unchanged; namely, three units in English and one unit in United States History. It is recommended that in schools where the program permits it, diplomas for 1952-53 be awarded on the basis of the new requirements.

2. A three-year senior high school, if it elects to do so, may graduate pupils on the basis of 12 units earned in senior high school, plus four units automatically allowed for completion of the work of the local 3-year junior high school provided the junior high school program is approved by the state high school supervisor. (The four units allowed for junior high school work may be allowed on English, mathematics, social studies and science, unless for one or more of these the junior high school substituted work in other fields.)

3. All high school students, in order to qualify for a state high school diploma, must complete a study of and pass satisfactorily an examination upon the provisions and principles of the United States Constitution and of American institutions and ideals. This instruction shall be given for a period of at least one year. Also, every student must satisfy the examining power of his loyalty thereto.

4. All schools of this State, grammar and high schools, which receive any state aid whatsoever, are required to teach the nature of alcoholic drinks and narcotics and to give special instruction as to their effect upon the human system. The State Board of Education shall provide for the enforcement of this provision.

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5. Courses in physical education, training, and instruction shall be established and provided in all public schools of this State for pupils of both sexes. Every pupil shall take part in this program so far as he or she is physically and mentally able to do so. Modified courses shall be provided for students mentally or physically unfit to take regularly prescribed courses for normal pupils.

6. It is recommended that a pupil, to be eligible for a state high school diploma, be required to attend the school issuing the diploma at least the semester immediately preceding his graduation.

7. Pupils who complete the work of the ninth and tenth grades in a non-accredited high school and who attend an accredited high school for work in the eleventh and twelfth grades may be allowed credit for work done in the ninth and tenth grades provided the principal and teachers of the school last attended consider this work of sufficient quality to justify permitting these pupils to do advanced work.

8. Regulations governing veterans (See Special Credit for Military and Veteran Personnel.)

9. No college credit may be substituted for high school credit.

10. Graduates of a new high school will be eligible for state high school diplomas when a supervisor from the State Department of Education has examined the records of each pupil for whom a diploma is requested before diplomas are issued to a school for the first time and provided they meet other requirements.

11. Courses in Trade, General Mathematics and Mechanical Drawing offered by the South Carolina Trade Schools may carry regular high school credit. An individual student is limited to four units on Trades, one unit on General Mathematics, and one unit on Mechanical Drawing and Blue Print Reading. For each unit allowed for Trades and Mechanical Drawing, the minimum time spent on the work of the course is 360 hours. For General Mathematics the minimum time for one unit is 180 hours. Teachers must hold certificates in their respective fields.

12. The South Carolina Industrial School for Boys, Florence, South Carolina, may award a maximum of one unit of credit in Agriculture, provided (1) the teacher is certified to teach Agriculture, (2) a minimum of 90 minutes per day is devoted to the work, (3) the students receiving credit are qualified as high school students, and (4) supervision of the program is provided in the same manner as pertains to Agriculture work in accredited high schools.

13. Credit toward a state high school diploma will be allowed only on subjects approved by the State Board of Education.

19. Limitations on the offerings of modern languages.

A school that employs five teachers or fewer may not offer more than one modern language, the beginning class in the subject to be either in the eleventh or twelfth grade.

20. Limitations on the offering of major electives.

A school that employs five or fewer teachers may offer major elective subjects only in the tenth, eleventh and twelfth grades.

21. Approval of program by high school supervisor.

No program of studies is to be recognized for credit without the approval of the high school supervisor.

22. Summer schools.

Work done in summer schools shall equal in quality and quantity that of the regular school term. The qualifications of the teachers, the equipment, and the standards enforced shall be the same as in the regular school term. All Summer school work shall be organized by and under the direction of the principal.

Classes shall meet in the school building. A definite schedule shall be followed. The amount of credit pupils may earn in summer schools shall not exceed that earned in corresponding periods during the regular school year.

Not more than one and one-half units in new subjects shall be earned during one summer. No pupil shall be allowed to earn more than four new units in summer terms.

23. Special credit for military personnel and veterans.

High schools may grant not more than four units of credit, based on the American Council on Education's table of credit values, for courses taken through the United States Armed Forces Institute since July 1, 1948. Basic or recruit training taken since the above

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date may be accepted in lieu of required courses in hygiene and physical education but no units of credit may be granted.

For work done in the following branches of the Armed Forces *before July 1, 1948*, a maximum of four units of credit toward a state high school diploma may be granted: United States Armed Forces Institute Courses; United States Armed Forces Institute subject examinations; high school courses offered through USAFI by cooperating colleges and universities; Marine Corps Institute courses; Coast Guard Institute courses. Two additional units of credit may be granted for basic or recruit training.

The State Department of Education recognizes the high school level Tests of General Educational Development for service personnel and veterans and will issue a state high school certificate of equivalency subject to the following conditions:

(a) Applicant must be either a resident of the state, or a resident temporarily residing outside the state, or have taken the GED Test while stationed in South Carolina.

(b) Must be nineteen years of age or older.

(c) Applicant must attain an average standard score of 45 or above for the five tests.

(d) A \$1.00 fee is required.

(e) Application should be made to the State Department of Education.

(f) No previous high school enrollment required.

24. The high school certificate.

The State Department of Education awards a state high school certificate on the basis of a special certificate examination. A candidate for this certificate must be a resident of South Carolina, must be nineteen (19) years of age or over and not regularly enrolled in high school. Beginning January 1, 1949, no credit toward graduation from high school will be allowed for completion of the certificate examination. The state high school certificate may be awarded on the basis of the General Educational Development Tests, high school level, restricted form, provided the minimum score as fixed by the State Board of Education is achieved, and it is administered by certain authorized military personnel.

The South Carolina high school certificate may also be awarded on the basis of official reports direct from state-controlled examining centers in other states, provided that the examination battery used is comparable to the test battery in use in South Carolina, and provided the scores attained meet the South Carolina requirements.

25. Correspondence courses.

Credit may be allowed for extension courses only when taken through the Extension Division of the University of South Carolina and approved specifically by the local superintendent or principal and by the state high school supervisor. Credit earned by a pupil on an extension course must be included in calculating the maximum load that a pupil is permitted to carry. No pupil may be permitted to apply more than two extension course units to the sixteen units required for graduation except on the specific approval of the state high school supervisor. Extension courses should be taken only under the supervision of teachers in the local schools.

26. High school records.

High schools must keep accurate cumulative records, either on a cumulative record card approved by the State Board of Education, or on such forms as provide essentially the same information. Permanent records should be filed alphabetically in fireproof filing cabinets that can be locked.

27. Instructional material.

Instructional materials should be adequate to cover the units of work based upon the text or outline used as a basis for teaching.

28. Standards for accredited junior high schools.

The State Board of Education recognizes the junior high school in the state system of education and may extend to a junior high school accredited status, provided all standards as prescribed by the State Board of Education are met.

a. A junior high school that is not a unit in a school district or a combination of school districts which also operates a senior high school will not be accredited. (This provision will not affect the status of junior high schools accredited prior to January 1, 1949.)

b. Grades 7, 8 and 9 are recognized as junior high school grades. In order to be accredited, a junior high school must offer a program in all three of these grades.

c. The recommended minimum enrollment is 300 pupils. On recommendation of the

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high school supervisor, a smaller enrollment may be acceptable, provided local circumstances, such as consolidation and housing facilities, would seem to justify approval.

- d. The program of work on each grade level should be departmentalized to the extent that pupils may have the benefit of an enriched program for which the junior high school is intended.
- e. Definite provision must be made for a guidance program, including testing, pupil accounting and counselling.
- f. Credit toward graduation may not be allowed for work done below the ninth grade level.

In all respects, not included specifically in the above statements of standards governing the operation of accredited junior high schools, the standards prescribed by the State Board of Education for accredited high schools will apply.

NOTE: State plans for Vocational Education, Vocational Rehabilitation, Teacher Training and Certification are filed in the office of the Secretary of State.

Educational Finance Commission, State.

ADOPTED BY SOUTH CAROLINA STATE EDUCATIONAL FINANCE COMMISSION.

Pursuant to § 21-58, S. C. Code of 1952.

General Transportation Regulations

(Filed Secretary of State's office June 11, 1952.)

1. The Principal or Superintendent of each school shall assume the responsibility for supervision of all school buses which terminate at his or her respective school. He shall keep informed as to all laws and regulations governing school bus transportation and cooperate fully at all times in the execution of same. Accurate records for transportation must be kept and reports made as requested. Teachers may be assigned to school bus duties by the Principal or Superintendent in the interest of the transportation program.

2. Principals or Superintendents shall nominate, with the approval of the District Board of Trustees, to the County Board of Education, prior to the closing of school, well-qualified and dependable regular and substitute drivers who reside inside the school district or attendance area at a point as near the beginning of each route as is possible.

3. In schools where pupils are transported to elementary schools which feed into central high schools for high school work, the State shall not be required to operate buses for high school and elementary pupils separately. The schedule of work and the opening and closing hours for all schools served by the same buses must be so arranged as to facilitate a maximum amount of school work and at the same time, permit the operation of a satisfactory and economical transportation program.

4. The Commission will not approve payment from State funds of more than twenty-five dollars per month as salary for an adult bus driver.

5. Buses shall be routed to make two or more trips where the combined trips (one way) can be made in one hour and fifteen minutes.

6. School bus stops are to be set up on each route not less than two-tenths of a mile apart at safe points. During periods of inclement weather, buses may be allowed to stop at safe points nearest the house of each child, on the regular routes. Stops shall not be made on blind curves, steep grades, or near the crest of hills. On routes where buses are required to turn around in traversing their routes, points shall be selected in the interest of safety and with a view toward the walking limit of one mile.

7. Buses must be left on the school grounds or in the vicinity of the school during the school day.

8. Pupils are not to be transported from one district to another when an appropriate school is provided within the district. This should be considered in routing all buses.

9. Parents or guardians of school pupils who have physical handicaps, such as crippled pupils or pupils with chronic disorders of lengthy duration, may apply for special school bus transportation service for such pupils in the following manner:

- a. Have the pupil examined by the local County Health Officer.
- b. Receive a written statement from the County Health Officer to the effect that, without special school bus transportation service, unusual hardship is experienced by the pupil in walking the required distance to the regular bus route.

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- c. Submit the statement from the County Health Officer to the County Superintendent of Schools and request service.
- d. The County Superintendent may submit the statement with a request for special school bus transportation service to the Educational Finance Commission for approval. Approval by the Educational Finance Commission shall be required before a change in a school bus route for this purpose becomes official.
- e. Approval for such a change in a school bus route shall terminate at the end of a school year, at the time when the pupil has become normal, or when the pupil for whom the service was intended has moved to a different residence.
10. Transportation on regular school routes is authorized only for pupils regularly enrolled in a public school in grades one through twelve.
11. No school bus owned or operated by the State of South Carolina shall transport any child who lives within one and one-half miles of the school he attends. Distance is to be determined by the closest route over publicly maintained roads or streets. No school bus shall stop, except at schools, for the purpose of picking up or discharging any school child who lives within one and one-half miles of a school, unless the child lives more than one and one-half miles from the school he attends or unless the child qualifies for transportation because of physical handicaps under regulation #9.

Regulations Governing School Bus Permits.

(Filed Secretary of State's office, June 11, 1952.)

1. When State-owned buses are used by the schools for educational purposes other than transporting pupils to and from school, the cost of operation is borne by the school district using them. The driver shall be paid directly by the local school. In addition, a charge of 15¢ per mile, payable to the Commission, shall be made regardless of the size of the bus used.
2. All drivers must possess a School Bus Driver's Certificate issued by the State Highway Department.
3. The use of school buses for purposes other than transporting pupils to and from school shall in no way conflict with the regular school schedule.
4. The use of State-owned buses shall be limited to those events and activities actually conducted and sponsored by school authorities. They shall be used only for pupils regularly enrolled in grades one through twelve, and they shall not be available for use for other organizations and agencies.
5. Where buses are used for athletic or other extra-curricular events, their use shall be limited to the transportation of participants and chaperones.
6. Permission to use buses for purposes other than transporting pupils to and from school must be secured in writing from the County Board of Education. This permission shall be granted in triplicate on forms to be supplied by the Commission, one copy to be sent to the Commission.
7. The use of State-owned buses for extra-curricular purposes for trips outside the State shall be limited to athletic and other school activities in adjacent areas in border states.
8. The permit for the use of school buses issued by the County Board of Education will be taken by the driver on each trip made by the bus, other than trips made transporting children to and from school over the regular route.

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Employment Security Commission.

ADOPTED BY THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION.

Pursuant to § 68-63, S. C. Code of 1952.

General Rules.
Regulations.
Seasonal Rules.
Appeal Regulations.

General Rules.

(Filed Secretary of State's office August 10, 1942, unless noted otherwise.)

Rule 1. Cash value of certain remunerations:

(a) The South Carolina Unemployment Compensation Act, as amended June 30, 1939 and in effect until July 1, 1941, provides in Section 19 (m) that:

"'Wages' means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash . . . The reasonable cash value of remuneration payable in any medium other than cash . . . shall be estimated and determined in accordance with rules prescribed by the Commission."

(b) The South Carolina Unemployment Compensation Act, effective July 1, 1941, provides in Section 19(m)(1) that:

"'Wages' means all remuneration paid for personal services, including commissions and bonuses and the cash value of all the remuneration paid in any medium other than cash . . . The reasonable cash value of remuneration paid in any medium other than cash . . . shall be estimated and determined in accordance with rules prescribed by the Commission."

The Commission accordingly prescribes that:

A. If board, lodging, or any other payment in kind considered as payment for services performed by a worker, is in addition to or in lieu of (rather than a deduction from) money wages, the Commission shall determine or approve the cash value of such payment in kind, and the employer shall use these cash values in computing contributions due under the law. (Filed Secretary of State's office November 23, 1948.)

B. Where cash value of board and lodging furnished a worker is agreed upon in the contract of hire the amount so agreed upon shall, if more than the rate prescribed herein, be deemed to be the value of such board and lodging, subject to review by the Commission. Until and unless in a given case the rate for board and lodging is determined by the Commission, board and lodging furnished in addition to and in lieu of money wages shall be deemed to have not less than the following values:

Full board and room weekly	\$6.80
Meals, per week	5.20
Meals, per day	0.80
Meals, per meal	0.30
Lodging, per week	1.60
Lodging, per day	0.30

(Filed Secretary of State's office November 23, 1948.)

Rule 2. Authorized representatives of the commission:

The Commission may designate by written authorization any of its employees as its representatives to administer oaths and affirmations, issue subpoenas for the production of books, papers, correspondence, and other memoranda deemed necessary by it as evidence in connection with disputed or contested claims, or in the administration of the South Carolina Unemployment Compensation Law. (Filed Secretary of State's office, August 14, 1952.)

Regulations.

Regulation I. Effective date of regulations; publication:

Regulations adopted by the Commission become effective upon the filing of certified copy thereof with the Secretary of State, which shall constitute publication thereof. The text of all regulations shall be printed and made available for distribution to the public.

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Regulation II. Displaying of informational posters:

All employing units having individuals engaged in employment, as defined by Section 19(g) of the Act, shall post and maintain in conspicuous places where workers perform their services such informational posters as are provided by the Commission so that the information printed thereon may be read by all workers.

Regulation III. Displaying coverage information:

(Filed Secretary of State's office May 9, 1946.)

Every employer (including every employing unit which has elected, with the approval of the Commission to become an employer) shall display and maintain such printed posters as the Commission may prescribe and furnish. Such posters shall be displayed by the employer in conspicuous places where workers perform their services, but only so long as the employer shall be subject to the law.

Regulation IV. Furnishing printed information to workers:

(Filed Secretary of State's office May 9, 1946.)

The poster referred to in Regulation III shall inform the worker to report promptly to the nearest Employment Service Office in the event of his or her becoming totally or partially unemployed and shall give the location of that office.

Regulation V. Records:

A. Each employing unit shall preserve for five years existing records with respect to individuals in its employ on or after July 1, 1936, indicating the data hereinafter set forth:

1. For each pay period:
 - (a) The beginning and ending dates of such period.
 - (b) The largest number of workers in employment during each calendar week of such pay period.
2. For each individual employed during such period:
 - (a) His name and Social Security Account Number.
 - (b) Number of hours worked each week, if less than full time.
 - (c) Time lost by worker when work available but worker unavailable and the reason for the worker's unavailability.
 - (d) His money wages (including special payments) paid for employment.
 - (e) Reasonable cash value of remuneration paid by the employer in any medium other than cash. (See Rule 1.)
 - (f) The date on which he was hired, rehired, or returned to work after temporary layoff, and the date and reason he was separated from employment.

B. RECORDS IN REGARD TO PARTIAL BENEFITS:

In addition to the requirements set forth in Regulation V-A, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each worker in his employ who may be eligible for partial benefits:

1. Wages earned, by weeks as described in Regulation XV-B.
2. Whether any week was in fact a week of less than full-time work.
3. Time lost, if any, by each such worker, due to his unavailability for work.

Regulation VI. Reports and instructions relative to report form:

A. Each employing unit shall make such reports as are prescribed by the Commission on forms issued by and required to be returned to the Commission.

B. Each employing unit shall comply with instructions pertaining to the contents and due date of any report form issued by the Commission. Such instructions shall have the full force and effect of regulations when published in the manner provided in Regulation I.

C. REPORTS COVERING WAGES OF INDIVIDUALS IN EMPLOYMENT:

Except as otherwise provided, each employer shall submit on or before the last day of the first month following the quarter covered by such report, a form report showing each individual in his employment during the preceding quarter. Form shall set forth:

1. The employer's name and account number assigned by the Commission.
2. The worker's full name.
3. The worker's Social Security Account Number.
4. (a) His total earnings for employment for any quarter up to and including June 30, 1941.

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(b) His total wages paid during any quarter for employment on and after July 1, 1941.

5. If separated, the date of separation.

6. Such other information as required by the form.

D. Where employing units have failed to make reports previously required and similar information is now required on a different basis, the Commission may allow such delinquent reports to be filed showing only such information as is now necessary; provided, however, nothing herein shall be construed as relieving such delinquent employing unit from any penalty or liability for previous failure to file such report at the time previously required.

Regulation VII. Contributions: interest:

A. Contributions shall be payable quarterly with respect to wages payable within each calendar quarter ending prior to July 1, 1941, and with respect to wages paid within each calendar quarter commencing after June 30, 1941.

B. Contributions shall become due on, and shall be paid on or before the last day of the month following the quarter for which they are payable, provided, however, that any employer whose accounting offices from which contribution reports and payments are rendered are located outside of the State of South Carolina may file application with the Commission for extension of the due date of contributions payable by such employer, and upon approval of such application the due date for such contributions may be extended not more than fifteen (15) days.

C. The first contribution payment of any employing unit which becomes an employer at any time during a calendar year shall become due on, and shall be paid on or before the last day of the month next following the quarter in which such employing unit becomes an employer, and shall include contributions which have accrued for the entire period beginning January 1, up to and including the calendar quarter in which the employing unit becomes an employer except that an employing unit which becomes an employer on or after April 1 of any calendar year, may, upon application be authorized to pay fifty per cent (50%) of its first contribution on or before July 31, twenty-five per cent (25%) on or before October 31, and twenty-five per cent (25%) on or before January 31, next following provided that the entire unpaid balance shall become due immediately if the employer fails to pay any installment when due.

D. Employers who are delinquent in the payment of contributions with respect to any calendar year or portion thereof, may, upon application, be authorized to pay the delinquent contributions, with interest on deferred amounts until actually paid, in consecutive installments of such amounts and over such periods and at such times as may be approved by the Commission or the Executive Director thereof, *Provided*, that the entire unpaid balance shall become due immediately if the employer fails to pay any installment when due, and, *Provided, further*, that only one such extension may be granted within any twenty-four (24) months' period.

Regulation VIII. Information to be furnished with respect to changes in ownership, notification of acquisitions, and methods for the transfer of experience rating reserve accounts.

(Filed Secretary of State's office June 5, 1950.)

A. Notice to be Given Commission of Changes in Ownership for Purposes of Status Determination and Experience Rating Succession.

1. Any employer who discontinues business shall give notice to the Commission in writing. This notice shall include the exact date of such discontinuance and shall be submitted within thirty (30) days after the date of discontinuance.
2. Any employer who by any means transfers substantially all (95 per cent or more) of its business or assets thereof to another shall notify the Commission in writing. This notice shall be submitted within thirty (30) days after the date of transfer and shall include the date on which the transfer occurred, together with the name and postoffice address of the employing unit to whom the transfer was made.
3. Any employer who by any means transfers a portion (less than 95 per cent) of its business to another shall notify the Commission in writing. This notice shall be submitted within thirty (30) days after the date of transfer and shall include the date on which the transfer occurred, together with the name and postoffice address of the employing unit to whom the transfer was made. The Commission shall be informed as to the nature and extent of each such partial transfer with particular reference to the description or identification of the part of the business transferred, together with a notation as to the proportion of the total business thus transferred.

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4. Each employing unit which by any means acquires all or a portion of the business, or assets thereof, of any employer, or which has acquired its own business, or all of the assets thereof, from another, which at the time of such acquisition was an employer subject to the Act, shall notify the Commission in writing within thirty (30) days after the end of the quarter in which such acquisition occurred. This notice shall be in such form as to include:
 - (a) From whom acquired.
 - (b) The exact date of acquisition.
 - (c) The portion of the business or assets of the predecessor acquired by the successor.
 - (d) Whether acquirer be an individual, partnership, or corporation. If a partnership, the name, address and legal domicile of each partner must appear.
5. In the event of any change of form of organization between, to or from a corporation to a partnership or individual ownership; from partnership to corporation or individual ownership; or from individual ownership to partnership or corporation, notice of such change and the date thereof shall be immediately made to the Commission by the successor organization.
6. The employer, if a corporation, shall immediately notify the Commission of any change of name, forfeiture, or cancellations of charter, reincorporation, merger or consolidation, or any other change in corporate entity.
7. The employer, if a partnership, shall immediately notify the Commission of any change in the partnership by reason of any person ceasing to be or becoming a partner, and shall report the name of any such person and the date that he or she ceased to be or became a partner.
8. The employer, if a corporation, shall furnish the Commission with a list of all subsidiary corporations owned or controlled by it and a list of all corporations which with it are owned or controlled by any corporation, association, partnership, or individual.
9. Employers shall immediately notify the Commission in the event of consolidation, dissolution, receivership, insolvency, bankruptcy, composition, assignment for the benefit of creditors, or similar proceedings. Corporations shall likewise report changes in stock ownership affecting ten per cent (10%) or more of the capital stock.

NOTE: Attention is directed to Section 7 (c)(3)(IV) and Section 7 (c)(3)(V) of the South Carolina Unemployment Compensation Act as to the conditions under which total or partial transfer of experience rating reserve accounts can take place and as to the provisions for rate computation upon such transfer.

B. Total Transfer of Experience Rating Reserve Accounts Where Substantially All (95 per cent or more) of a Business, or the Assets Thereof, Have Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A 2 and A 4 of this regulation and shall furnish such additional information as may thereafter be requested by the Commission.
2. The acquiring employer may expedite the total transfer to it of the reserve account of the transferring employer by making application therefor by letter or on such forms as the Commission may furnish. Such application should be filed with the Commission by the end of the quarter in which the succession takes place and in no case later than thirty (30) days after the close of the quarter in which the succession occurred.
3. The Commission shall upon its own initiative transfer the experience rating reserve account of the transferring employer to the acquiring employer whenever the Commission ascertains that there has been a transfer of substantially all of a business, or assets thereof, inasmuch as a total transfer of the experience rating reserve account under such a condition is required by law.

C. Partial Transfer of Experience Rating Reserve Accounts Where a Portion (less than 95 per cent) of a Business Has Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A 3 and A 4 of this regulation and shall furnish such additional information as may thereafter be requested by the Commission.

NOTE: The law directs that no partial transfer of an experience rating reserve account may be made unless request is entered therefor by both the transferring and the acquiring employers.

2. (a) The transferring employer may request by letter or by such forms as the Commission may furnish that the portion of its experience rating reserve account which is attributable solely to the portion of the business acquired by the acquiring employer be transferred to the acquiring employer. Such request should

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- be filed promptly and must not be made later than thirty (30) days after the close of the quarter within which the succession occurred.
- (b) The acquiring employer may request by letter or by such forms as the Commission may furnish that the portion of the experience rating reserve account of the transferring employer which is attributable solely to the portion of the business acquired be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) days after the close of the quarter within which the succession occurred.
- (c) The requests by employers under (a) and (b), above, may be entered by August 7, 1950, in those cases of partial acquirement taking place between January 1, 1949, and May 6, 1950.
3. Upon receiving requests for both the transferring and acquiring employers for the transfer of the portion of the experience rating reserve account of the transferring employer attributable solely to the portion of the business acquired by the acquiring employer, the Commission shall require that the transferring employer supply the Commission with the following data to be used in reaching a determination of the part of the experience rating reserve account to be transferred:
- The total payroll (taxable wages) related to the distinct and severable portion of the business transferred for the three (3) fiscal year period ending on June 30 immediately preceding such transfer, or such lesser period as the severable portion may have been in operation and from such June 30 to the date of such partial transfer.
4. (a) The total payroll (taxable wages) of the transferred portion of the business for the three-year period or such lesser period as the severable portion may have been in existence shall be divided by the total payroll of the predecessor for such period to establish a transfer percentage.
- (b) The total payroll (taxable wages) for the three-year period ending on the June 30 immediately preceding and for the period beginning with such June 30 and ending with the date of transfer which relates to the distinct and severable portion of the business transferred shall be transferred from the predecessor employer to the successor employer.
- (c) The amount obtained by multiplying the following items by the "transfer percentage" shall be transferred from the predecessor to the successor:
- (1) The payroll (taxable wages) for those years in which the severable portion transferred was in existence prior to the period specified in paragraph C 4 (b).
- (2) The contributions credited to and the benefits charged to the predecessor's experience rating reserve account for the period beginning with the year in which the severable portion began operating and ending on June 30 preceding its transfer, and
- (3) The contributions credited to and the benefits charged to the predecessor's experience rating reserve account subsequent to June 30 and prior to the date of the transfer of the severable portion of the business.
5. In the event that a separate subsidiary experience rating account has been maintained by the Commission with respect to the distinct and severable portion of the business transferred for the entire period of the operation of such portion, Section C 3 and C 4, above, will not apply. The total contributions paid, benefits charged, reserve balance, and payroll (taxable wages) appearing on such subsidiary account, together with those items entered on that account from the preceding June 30 up to the date of the partial transfer of business will be transferred from the experience rating reserve account of the transferring employer to the experience rating reserve account of the acquiring employer.
6. In the event that the transferring employer shall not have been a subject employer under the South Carolina Unemployment Compensation Law for at least three (3) years prior to the June 30 preceding the date of the partial acquisition, the entire period of the liability of the transferring employer, or such lesser period as the distinct and severable portion may have been in operation, will be considered for the purpose of ascertaining the proportion of the reserve account to be transferred in accord with Sections C 3, C 4, and C 5, hereof. Sections C 3 and C 4 will be applicable unless a separate subsidiary experience rating account has been maintained by the Commission with respect to the distinct and severable portion of the business transferred for the entire period of the operation of such severable portion, in which case Section C 5 will apply.

Regulation IX. Workers to produce social security account numbers:

A. Each employer shall ascertain the Social Security Account Number of each worker employed by him in employment.

B. Each worker who is engaged in employment for an employer, but who does not have a Federal Social Security Account Number shall file an application therefor not later than one week after the effective date of this regulation, or not later than one week after the first day on which he is engaged in employment for an employer, whichever occurs later. It shall be the duty of employers to procure the appropriate forms of application for Social Security Account Numbers and to furnish such application forms to each worker in their employ who does not have a Federal Social Security Account Number.

C. If an employer has in his employ a worker who does not have a Federal Social Security Account Number and who has failed to file an application therefor within the period prescribed in Paragraph B of this Regulation, such employer shall, not later than two weeks after the effective date of this Regulation, or not later than two weeks after the first day in which such employer employed such worker, whichever occurs later, file an application for a Federal Social Security Account Number for such worker. A worker who is engaged in employment for an employer and who does not have a Federal Social Security Account Number, shall not be relieved from his duty to file an application for a Federal Social Security Account Number by reason of his employer's having filed an application for him.

4. Applications for Social Security Account Numbers shall be filed and the numbers obtained in accord and compliance with the procedures of the Social Security Administration appertaining thereto.

Regulation X. Separation notices:

(Filed Secretary of State's office May 10, 1947.)

A. Notice of Separation Under Conditions Which May Disqualify:

1. (a) A copy of each initial or additional claim filed by a worker will be mailed by his local Employment Service Office to his last employer regardless as to whether the latter is liable or non-labile under the Act.
 - (b) When an employer desires to protest such a claim on the grounds that the worker should be disqualified for a reason set forth in Section 5 of the Act, he shall fill in the information called for on the back of the copy received by him and return the same to the address of the office shown thereon so as to reach such office not later than the seventh (7th) day from the date the claim was filed.
 - (c) Any employer who fails to furnish separation information indicating that a claimant is disqualified for benefits shall be presumed to have admitted that such worker is not disqualified under any of the provisions of Section 5 of the Act.
- (1(a) (b) (c) filed Secretary of State's office June 20, 1950.)

B. Mass Separations:

1. The term "mass separation" means a separation (permanently, or for an indefinite period, or for an expected duration of seven or more days) at or about the same time and for the same reason of twenty-five or more workers employed in a single establishment.
2. In cases of mass separations the employer shall, for each individual affected, file with the Employment Service Office nearest the worker's place of employment, or with such office nearest employee's residence, Form UCB-113, setting forth such information as is required thereby; such form shall be filed not later than two days, exclusive of Sundays and holidays, after such separation.
3. Employers shall have the option of having employees sign Form UCB-113 if desirable and such action meets the approval of the local Employment Office.

C. Notice of Unemployment Due to a Labor Dispute:

1. In all cases of unemployment due to a labor dispute the employer shall follow the procedure set forth in Regulation XII-D.

D. In all cases of initial claims and additional claims (requests for reinstatement of benefits) filed on and after May 3, 1948, where a claimant has been separated under non-disqualifying circumstances from the employ of a non-labile employer, the last covered (liable) employer by whom the claimant was employed will be requested to furnish information relative to the separation of the claimant from employment with such covered (liable) employer or as to any offer of work made to the claimant by such covered (liable)

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employer in accord with Regulation XIV of this Commission subsequent to the separation of the claimant from the employ of such covered (liable) employer. Separation information must be maintained by employers in accord with Regulation V (A)(2)(g) of this Commission. (Filed Secretary of State's office April 17, 1948.)

For construction of former regulation, see *ing Co.*, 196 S. C. 291, 13 S. E. (2d) 281 *Chambers v. Rock Hill Printing & Finish-* (1941).

Regulation XI. Types of unemployment:

A. "Total Unemployment" means the unemployment of any individual in any week during which he performs no services and with respect to which no wages are payable to him.

B. "Part-Total Unemployment" means the unemployment of any individual in any week of less than full-time work in which he earns some remuneration (but less than his weekly benefit amount) and throughout which he is not attached to a regular employer.

C. "Partial Unemployment" means the unemployment of any individual who, during any week, earns less than his weekly benefit amount, is employed by a regular employer, and works less than his normal customary full-time weekly hours because of a lack of full-time work.

Regulation XII. Filing claims for benefits and registration for work:

A. TOTAL UNEMPLOYMENT:

1. Individual Claims:

(a) Initial Claims: Any individual claiming benefits or waiting period credits for total unemployment shall report in person at the Employment Service Office nearest the place of his most recent employment or residence, and shall there, on Form UCB-101, set forth that he (1) registers for work, and (2) files a claim for benefits. Such a claim shall constitute the individual's registration for work and his claim for benefits or waiting period credits.

(b) Continued Claims: In order to establish eligibility for benefits or waiting period credits for succeeding weeks of total unemployment during any continuous period of total unemployment, the claimant shall continue to report in person at intervals of one week, or at intervals of less than one week, when so directed by a representative of the Commission at the office at which he registered for work and filed his initial claim for benefits; or, with the consent of a representative of the Commission at such office, for reasons found to constitute good cause for his inability to report to such office, at any other Employment Service Office, and file at such office a continued claim for benefits on Form UCB-103, setting forth:

- (1) That he continues his claim for benefits.
- (2) That he registers for work.
- (3) That he is totally unemployed and that since he last registered for work he has performed no service and earned no wages except as indicated.
- (4) Such other information as is required thereby.

2. Mass Claims:

(a) Initial Claims: The filing by an employer on Form UCB-113, in accordance with Regulation X-B, shall constitute registration for work and filing of a claim for benefits for each individual for whom such form is submitted for the seven (7) day period covered by the notice as specified in Regulation XV.

(b) Continued Claims:

(1) In order to establish eligibility for benefits or waiting period credits for succeeding weeks of total unemployment during any continuous period of total unemployment, the claimant shall continue to report in person at intervals of one week or at intervals of less than one week, when so directed by a representative of the Commission at the office at which he registered for work and filed his initial claim for benefits; or, with the consent of a representative of the Commission at such office, for reasons found to constitute good cause for his inability to report to such office, at any other Employment Service Office, and file at such office a continued claim for benefits on a form to be furnished by the Commission setting forth:

- a. That he continues his claim for benefits.
- b. That he registers for work.

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- c. That he is totally unemployed and that since he last registered for work he has performed no service and earned no wages except as indicated.
- d. Such other information as may be required thereby.
- (2) In isolated areas, in cases of mass separation, continued claims for benefits for total unemployment may be filed by mail on forms prescribed by the Commission if the Commission finds that reporting or filing of continued claims in person is impracticable.

B. PART-TOTAL UNEMPLOYMENT:

Any claim for benefits for total unemployment made pursuant to the provisions of Section A of this Regulation, with respect to any week, shall constitute a claim for benefits for part-total unemployment in the event that the claimant shall be part-totally unemployed with respect to such week. In connection with any claim for benefits for part-total unemployment, the claimant shall declare the amount of his earnings and the source thereof for the seven day period for which he claims part-total unemployment benefits to the representative in the Employment Service Office who takes his claim for benefits, and shall sign a continued claim form stating that information contained thereon is correct.

C. PARTIAL UNEMPLOYMENT:

1. Individual Claims:

- (a) Individual partial unemployment shall include any situation in which one or more workers, but less than twenty-five (25) in a single establishment become partially unemployed individuals as defined in Regulation XI-C.
- (b) Initial Claims:
 - (1) For each partially unemployed worker, for whom a current benefit year has not been previously established, and who in one payroll week has been furnished by his employer with less than four full days' work, or the time or dollar equivalent thereof, the employer shall promptly prepare in duplicate Form UCB-114 (revised) "Low Earnings Report and Claim—Partial Unemployment." All information requested on the upper portion of the form must be supplied. The employer shall, if possible, obtain the signature of the worker on the original and shall deliver the copy to the worker. After the signature of the worker is obtained, the employer shall promptly forward the Form UCB-114 to the nearest Employment Service Office. If the worker's signature cannot be obtained, the employer shall deliver the unsigned original to the nearest Employment Service Office and shall deliver or mail the copy to the worker.
 - (2) The worker shall complete the information requested in the lower portion of the original form (or the duplicate if this is used in filing the claim), and shall sign in the proper place showing his present address.
 - (3) The worker may file his own claim for partial benefits, using his copy of Form UCB-114 if available, and, if not, using Form UCB-115, provided he does so within twenty-eight (28) days immediately following the date upon which he receives appropriate notice from his employer as to his earnings with respect to any week of partial unemployment.
 - (4) In case of good cause shown for failure to file a claim for benefits within the time limit permitted under paragraph (3), just preceding, such filing shall be permitted at any time prior to the expiration of the thirteen (13) week period subsequent to the end of the benefit year (actual or potential) during which such week of partial unemployment occurred. Failure to file claim for benefits within the time limit permitted under paragraph (3) shall be deemed to be for good cause if due to failure on the part of the employer to comply with verification or other requirements relating to partial unemployment, to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim for partial unemployment, or to a failure by the Commission to discharge its responsibilities in connection with partial unemployment.
 - (5) Unsigned completed Forms UCB-114 which are received by an Employment Service Office from the employers shall be held thereby pending the filing of a claim. If no claim is filed by the worker within two (2) weeks, the Employment Service Office shall mail to the claimant a Form UCB-122, calling his attention to his right to file a claim. After a further period of

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twenty-eight (28) days, any remaining unsigned claims shall be forwarded to the Central Office.

- (6) When a worker is found to be eligible for partial benefits under a claim filed therefor, the Commission shall notify the employer and the claimant of the weekly benefit amount the claimant will receive if totally unemployed and otherwise eligible for benefits. Such notice shall state the date on which the benefit year of the claimant will end. The attention of the employer shall be called to the fact that the amount shown is applicable only to claims for any week within the benefit year shown and that the employer is required by regulations to continue to file weekly with the Employment Service Office a low earnings report (Form UCB-114) after, if possible, obtaining the signature of the worker and delivering to him the duplicate copy of the form until the partial unemployment of the claimant ceases or until otherwise notified by the Commission.
 - (7) When a worker is found to be ineligible because of insufficient earnings in his base period for partial benefits under a claim filed therefor, the Commission will notify the employer and claimant by so noting on the copies of the determination which shall be mailed to each. The employer shall be further notified that the claimant has been found ineligible to receive benefits during the quarter within which the initial claim was filed and that after the expiration of the quarter a low earnings report for any payroll week in which the worker has been furnished with less than four full days of work, or the time or dollar equivalent thereof must be filed.
 - (8) Upon receipt of the determination of the weekly benefit amount of an individual as found by the Commission, the employer shall record that amount and benefit year ending date upon his payroll records.
- (c) Continued Claims:
- (1) For any worker for whom a current benefit year has been established and of whose weekly benefit amount the employer has been advised, the employer shall file a low earnings report (Form UCB-114) for any week during which the worker earns wages but because of lack of full time work is working less than his normal or customary full time hours and is earning less than his weekly benefit amount.
 - (2) The employer shall promptly, if possible, have the worker sign this report and complete the information as called for thereon, being sure that the worker reports earnings with all other employers or employing units. The form, whether or not signed by the worker, shall then be promptly forwarded to the nearest Employment Service Office.
 - (3) Unsigned copies of Form UCB-114 received by an Employment Service Office from an employer shall be held thereby to be handled as outlined in paragraph C-1-(b)-(5) for initial claims.
 - (4) The worker may himself file his own continued claim for partial benefits under the same conditions as outlined for the individual filing of an initial claim. See paragraphs C-1-(b) (3) and C-1-(b) (4).
 - (5) For any week or weeks of total unemployment following a week of partial unemployment for which the employer has filed a Low Earnings Report (Form UCB-114), the employer may file Form UCB-114 for such week or weeks of total unemployment, provided the claimant is still attached to such employer and such week of total unemployment was due to the inability of the employer to furnish such claimant any partial employment during such week. (Filed Secretary of State's office September 30, 1949.)

2. Mass Partial Claims:

- (a) Mass partial unemployment includes any situation in which twenty-five (25) or more workers employed in a single establishment become partially unemployed individuals, as defined in Regulation XI-C.
- (b) In cases where mass partial unemployment exists, or appears to exist, or is expected, the employer shall promptly report to the Employment Service Office nearest the place of employment or residence of the individuals affected that (1) a mass partial unemployment situation appears to exist or is expected, (2) the expected duration thereof, and (3) the number of individuals affected. This notice may be made by mail, telephone, or otherwise.

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- (c) The employer shall file low earnings reports (Form UCB-114) for each week for each individual who is suffering a significant amount of reduced hours and is earning less than his weekly benefit amount. If the employer has not been notified of the weekly benefit amount of any individual in his employ, the employer shall file a low earnings report (Form UCB-114) for the first week that such individual suffered a significant amount of reduced hours and earns less than \$20.00 for such week. The procedure shall be the same as that outlined for individual claims for partial unemployment.
- (d) Upon receipt of the initial determination of the weekly benefit amount of an individual as found by the Commission, the employer shall record that amount and benefit year ending date upon his payroll records.
- (e) Any worker involved in a pass partial unemployment situation may call at the Employment Service Office and file his initial or continued claim for partial benefits under the same conditions as outlined for the filing of individual claims. See paragraphs C-1-(b) (3) and C-1-(b) (4). (Filed Secretary of State's office August 14, 1952.)

D. LABOR DISPUTES:

1. In cases of unemployment due to a labor dispute, the employer shall file with the Employment Service Office nearest the workers' place of employment a notice setting forth the existence of such dispute and the approximate number of workers affected. Such notice shall be filed within two (2) days after the commencement of the labor dispute.
2. Immediately upon notice by the employer, as above set forth, or upon information received from any other source that unemployment exists because of a labor dispute at any plant or establishment within the area served by it, the local Employment Service Office shall notify the special examiner designated by the Commission in accord with Section 6 (b) (1) of the Act.
3. Upon request by the Commission, the employer shall furnish to the Commission the names of the workers ordinarily attached to the department or establishment where such unemployment exists, together with their addresses and social security numbers.
4. The list of names, as set forth above, shall constitute initial claims for the individuals affected thereby and a special examiner designated by the Commission, according to Section 6 (b) (1) of the Act, shall make a determination as to whether or not such unemployment exists because of a labor dispute, and for seven (7) days thereafter from the first day of unemployment.
5. The filing of the list of names provided for in Sub-sections 3 and 4 of this regulation shall not deny any worker the right to file his claims for benefits in the usual manner and to have the same passed upon as otherwise provided by law.
6. In order to establish eligibility for benefits or waiting period credits for succeeding weeks of unemployment during any period of total or part total unemployment, an affected individual shall report in person at intervals of one week or at intervals of less than one week, when so directed by a representative of the Commission, at the Employment Service Office nearest his place of employment or residence (or, with the consent of a representative of the Commission at such office, for reasons found to constitute good cause for his inability to report at such office at any other Employment Service Office) and file at such office a continued claim for benefits on a form to be provided setting forth:
 - (a) The name of the employer and of the plant where he is normally employed.
 - (b) That he is unemployed because of a labor dispute existing at that plant.
 - (c) That he continues a claim for benefits.
 - (d) That he registers for work.
 - (e) That he is totally unemployed and that since he last registered for work he has performed no services and earned no wages except as indicated.
 - (f) Such other information as required thereby.
7. Upon receipt of notice or information that unemployment exists because of a labor dispute at any plant or establishment within the area served by it, the local Employment Service Office shall obtain brief statements from the employer concerned and from the union, labor organization, or other representative recognized as representing the workers involved. These statements shall include a summary of the facts, a synopsis of the issues involved between the employer and the workers, a listing of the classes, groups, and types of workers involved, and a report of the date on which the dispute commenced and of the date on which it concluded if the dispute be already

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- terminated. The local Employment Service Office shall specifically ask any union, labor organization or other representative recognized as representing the union involved to confirm or to deny the existence of a labor dispute. If there is no recognized representative of the workers, the local Employment Service Office shall so notify the special examiner.
8. (a) In case an apparent difference develops as to the facts in the case, the special examiner shall set a hearing, after giving due notice thereof, and determine the facts.
 - (b) In case there is no recognized representation of the workers, or if a recognized representative does not act, the special examiner shall give notice that information has been received indicating that the unemployment existing at such establishment is due to a labor dispute which disqualified otherwise eligible workers for benefits, and any information to the contrary should be presented to the special examiner within five (5) days, or, in the absence of any such information, a formal determination to this effect shall be made by the special examiner.
 9. In giving either of the notices required in the preceding paragraph, the special examiner shall advise the local Employment Service Office, the employer concerned, and the representative of the workers involved of the time and place of hearing. If there is no recognized representative of the workers or if the organized representative will not act, the special examiner shall notify the local Employment Service Office and the employer of the time and place of hearing. Similar notices shall be prepared and posted by the local Employment Service Office in conspicuous places that are accessible to the workers involved. If the special examiner shall determine the same to be necessary he shall advertise the notice in a newspaper generally circulated in the community where such labor dispute is in progress. The notice shall also be furnished directly to the claimants in those cases where individual claims are filed.
 10. (a) After hearing or without hearing if none is required by this regulation, the special examiner shall issue an initial determination as to whether or not unemployment exists or existed because of a labor dispute. In the event the ruling is that unemployment is due to a labor dispute, the special examiner shall determine the duration thereof and shall specify the application of the disqualification provision of Section 5 (d) of the Act with respect to the claims of individuals affected by Sub-divisions 3, 4 and 5 of this regulation.
 - (b) Should the special examiner determine that unemployment does exist because of a labor dispute still in progress, supplementary determinations shall be issued as may be required by any material change in the facts or a cessation of the dispute. Sub-divisions 7, 8 and 9 of this regulation shall also be applicable to such supplemental determination.
 11. Copies of the initial determination shall be mailed by the special examiner to the local Employment Service Office, to the employer, and to the representative recognized as representing the workers involved. The determination shall be mailed directly to the claimants in those cases where individual claims are filed, to the Employment Service Office at which the claims were filed, and to the employer.
 12. The initial determination of the special examiner may be appealed in the same manner, within the same time, and through the same procedures as any other initial determination. The Commission may, upon written request by a group of workers or their authorized representative, allow one of a group representing a grade or class of workers similarly situated to file an appeal which shall be known as a "Group Test Appeal" and the decision of the Appeal Tribunal and/or the Commission as to the disqualification of the representative because of the application of Section 5 (d) of the Act shall be binding as to the entire group. (Filed Secretary of State's office August 14, 1952.)

E. EFFECTIVE DATES OF CLAIMS:

1. Isolated Areas: If an individual residing in an area served only by the itinerant service of the Employment Service registers at the first available opportunity following the commencement of a week of unemployment, such registration shall be considered as of the beginning of such week of unemployment. This Regulation shall not be deemed to conflict with Regulation XII but shall be subject thereto.
2. Mass Situations: A week of partial unemployment for any individual included in group reporting by the employer, as provided in Regulation XII shall consist of a week of partial unemployment as defined in Regulation XV.

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3. Delay Excused for Cause: The representative in the Employment Service Office for reasons found to constitute good cause for any individual's failure to appear at the time specified for reporting to the Employment Service Office may accept a continued claim for such individual effective as of the first day of his week of total unemployment if such continued claim is filed within seven days following the date specified for his reporting.
4. Adjusting to Pay Roll Weeks: Where an individual has been employed in an industry or establishment having a well established payroll and files a claim for benefits, also constituting his registration for work, the effective date of his claim and registering for work may be established so as to coincide with the payroll period in cases where the processing of the claim will be facilitated thereby and no substantial injustice or denial of rights results to the claimant.

F. GENERAL PROVISIONS:

1. Individuals Located in Isolated Areas: In order to claim benefits or waiting period credits, or to establish eligibility for benefits for unemployment, any individual located in an isolated area served only by itinerant service of the Employment Service, shall report in person to such itinerant service at the first available opportunity therefor, and shall (a) register for work, and (b) file a claim for benefits with such service.
2. Mailing Claims: (a) Registration for work and filing of claims for benefits must be in person unless the claimant is located in an area not served by an employment office or by the itinerant service of the Employment Service and the reporting in person to the nearest facility of either is impracticable unless otherwise provided in these regulations, or unless it is found that good cause exists to allow the same to be mailed, in which case the date of mailing shall be considered the effective date of such action. (b) In the event that a claimant for benefits ceases to be unemployed, any required report of earnings and sources of earnings may be filed by mail.
 1. If a claim is received by mail and in the opinion of the Commission the reporting of the claimant to the nearest employment office or point of itinerant service is not impractical, the claimant shall so report in filing all succeeding claims.
3. Change of Address: Each claimant, upon changing his address, shall immediately notify the Employment Service Office at which he has last registered of such change of address, giving both the old and the new addresses.

Regulation XIII. Method of paying benefits:

Benefits shall be paid by check of the Commission issued on its Benefit Payment Account and shall be mailed to the individual's last known address.

Regulation XIV. Offers of work:

A. Section 5(c) of the Act directs that a claimant may be disqualified from the receipt of benefits should he fail without good cause to apply for available suitable work, when so directed by the employment office or the Commission; or should he refuse to accept available work when offered him by the employment office or the employer; or should he decline to return to his customary self-employment (if any) when so directed by the Commission.

B. Offers of work made directly by an employer shall be in writing and shall set out the nature of the work offered, the probable wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of employment, the time and place the claimant should report, and the name of the person to whom he is to report. No disqualification will be imposed by reason of the failure of a claimant without good cause to accept a direct offer of available and suitable work unless the employer submit a copy of such an offer to the Commission together with a certification that it was either received and refused by the claimant, or that it was directed by registered mail to the last known address of the claimant and that no response was made by the claimant. (Filed Secretary of State's office April 4, 1947.)

C. An employer may make an oral offer of work directly to a claimant, but before a claimant shall be disqualified to receive benefits by reason of his failure to accept, without good cause available suitable work so offered, a sworn statement shall be submitted by the employer to the Commission setting forth that the offer of work was made directly to the claimant, the nature of the work offered, the wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of the employment, the time and place the claimant should have reported for duty, and any reason given by

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the claimant for his refusal to accept the work. (Filed Secretary of State's office March 31, 1949.)

Regulation XV. "Week" defined:

A. WEEK OF TOTAL OR PART-TOTAL UNEMPLOYMENT:

1. Except as otherwise provided in Subsections 2, 3, 4 and 5, of this Section, a week of total or part-total unemployment with respect to any individual shall consist of the 7-consecutive-day period of total or part-total unemployment beginning with the day of total or part-total unemployment on which such individual registers in person at an employment office; and thereafter, the 7-consecutive-day period of total or part-total unemployment following any week of total or part-total unemployment provided, the individual reports as required by Regulations XII-A-1 and XII-B.
2. Except as provided in Subsections 4 and 5 of this Section, a week of total or part-total unemployment of an individual located in an area served only by the itinerant service of the Employment Service shall consist of the 7-consecutive-day period of total or part-total unemployment beginning with the first day of such individual's total or part-total unemployment, provided that such individual registers in person with such itinerant service the first day such service is available following the commencement of his total or part-total unemployment and thereafter, the 7-consecutive-day period of total or part-total unemployment following any week of total or part-total unemployment, provided the individual reports as required by Regulation XII-A-1, XII-B, XII-E-1, and XII-F-1.
3. Except as otherwise provided in Subsections 4 and 5 of this Section, a week of total or part-total unemployment of an individual located in an area not served by an employment office or by the itinerant service of the Employment Service shall consist of the 7-consecutive-day period of total or part-total unemployment beginning with the first day of such individual's total or part-total unemployment, provided that such individual registers and files a claim for benefits by mail in accordance with Regulation XII-F-2, within seven days after the commencement of such unemployment and thereafter, the 7-consecutive-day period of total or part-total unemployment following any week of total or part-total unemployment provided the individual executes and mails the claim as required by Regulation XII-F-2.
4. A week of total or part-total unemployment of an individual who fails to register on the first day of his total or part-total unemployment or on the first day thereafter on which the itinerant service is available, or by mail within 7 days thereafter, as specified in Subsections 1, 2, and 3 of this Section, for reasons found by the Commission to constitute good cause for such failure to register, shall consist of the 7-consecutive-day period of total or part-total unemployment beginning with the first day of such individual's total or part-total unemployment, provided that such individual registers in person at a public employment office within a period of 7 days after such first day of total or part-total unemployment, or on the next day thereafter on which the itinerant service is available following the day prescribed for registration in Subsection 2 of this Section, or by mail within 14 days after the commencement of such unemployment as the case may be; and thereafter the 7-consecutive-day period of total or part-total unemployment following any week of total or part-total unemployment, provided the individual reports or executes and mails a claim as required by Regulations XII-A-1 and XII-B.
5. A week of total or part-total unemployment of an individual affected by a mass separation, or by a strike, lockout, or other labor dispute with respect to which a notice is filed by the employer as provided for in Regulation XII-A-2 and X-C-1, shall consist of the 7-consecutive-day period of total or part-total unemployment beginning with the first day of his total or part-total unemployment, provided that notice thereof is filed by the individual in person within 7 days next following such first day of unemployment and thereafter, the 7-consecutive-day period of total or part-total unemployment following any week of total or part-total unemployment provided the individual reports as required by Regulations XII-A-2(b) and XII-D-2.

B. WEEK OF PARTIAL UNEMPLOYMENT:

A week of partial unemployment of an individual shall consist of his pay period week. With respect to a partially unemployed individual whose wages are not paid on a weekly basis, a week of partial unemployment shall consist of a calendar week, provided that the Commission may, upon its own initiative or upon application, prescribe to any individual or group of individuals such other 7-consecutive-day period as it may find appropriate

under the circumstances. Provided that notice of partial unemployment is given to an employment office in person or by mail not later than twenty-eight (28) days immediately following the date on which the claimant receives appropriate notice from his employer as to his earnings with respect to any week.

C. WEEK OF DISQUALIFICATION:

With respect to period of disqualification under Section 5 of the Act as amended, "Week" means the 7-consecutive-day period during which the disqualifying act occurred, beginning with the same day of the week as the benefit week established for such claimant. (Filed Secretary of State's office September 27, 1949.)

Regulation XVI. Wages payable in quarter:

A. "Quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

B. The terms "wages earned for employment" and "wages payable" in connection with any particular period shall be deemed to mean wages paid within that period in accord with Section 19(m)(1) of the Law. (Filed Secretary of State's office August 14, 1952.)

Regulation XVII. Payment of benefits to a deceased claimant:

Pursuant to the authority of Section 3(a)(2) of the South Carolina Unemployment Compensation Law and in order to provide for the payment of benefits in those cases where the claimant has filed a valid claim and has compensation payable to him for weeks of unemployment and who dies prior to receiving or cashing benefit check or checks, the Commission adopts the following regulation:

A. If there is an executor or administrator appointed within sixty (60) days, payment must be made to said executor or administrator.

B. If there is no executor or administrator appointed within sixty (60) days, payment may be made upon written application as hereinafter set out:

1. To the surviving wife or husband; and if there be none
2. To the minor children; and if there be none
3. To the adult children; and if there be none
4. To parents of the deceased; and if there be none
5. To any person or persons who were dependent upon the deceased; and
6. If there be no person within the foregoing classification, said payment to the deceased shall lapse and revert into the unemployment trust fund.
7. In the event payment is made to minor children as provided in Section B-2 of this Regulation, the payments may be made to any responsible adult with whom minor children are making their home, upon a written pledge to use said payment for the benefit of the said minors, will be considered proper and legal payment to the said minor children without the requirement of formal appointment of a guardian.

C. Written application for payment of such benefits must be made within six months after the death of the decedent, provided that the Commission upon good cause shown may extend the time for filing application.

D. Such application must be made in the form of an affidavit, in which the affiant sets forth his relationship to the deceased and the reasons she is eligible for precedence.

E. Such affidavit should be supported by a copy of the death certificate of the deceased claimant, and an affidavit of an uninterested party that he knows or is informed and believes that the information given by the first affiant is true and correct.

F. The burden of initiating a claim for compensation due and payable to a deceased claimant and of proving identity and the right to payment shall rest upon the individual making such application.

G. All benefit checks issued direct to the deceased shall be returned to the Commission for cancellation before any funds shall be paid in lieu of such checks. Provided, however, that where such checks cannot be obtained that an explanation to the satisfaction of the Commission is in order.

H. Upon the return of such a check for cancellation in satisfaction of the requirements of those regulations, payment may be made to the proper party by issuance of a check to said proper party with notation thereon of claimant's name, Social Security Number, Account Number and File Number.

I. Payments made in accordance with this Regulation shall for all purposes be deemed to have been made to all persons equitably entitled thereto.

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Regulation XVIII. Notice of benefit payments:

Employers shall be automatically notified when benefit payments begin to any claimant which are to be charged against said employer's account.

Regulation XIX. Military or naval service:

A. This regulation shall apply only to those individuals who on or after July 1, 1941, have been called or drafted in any branch of the Military or Naval Service or any organization affiliated with the defense of the United States or of the State of South Carolina, and by reason of which service such individual was not available for work and was not unemployed within the meaning of the South Carolina Unemployment Compensation Law.

B. Notwithstanding the provisions of Section 19(p) of the South Carolina Unemployment Compensation Law, for any individual provided for in the foregoing, the first benefit year following the termination of his military service shall be the one year period beginning on the day next following the date of such termination.

C. With respect to the benefit year as defined in Paragraph B hereof, the base period for such individual for whom a benefit year was current upon the date of his entry into the service, as above set forth, shall be the base period applicable to such current benefit year, plus all completed and incompleted calendar quarters occurring subsequent to the last day of such base period but prior to the date of his entry into the service aforesaid. Provided, however, that in the computation of available benefits for such individual, for whom a benefit year was current upon the date of his entry into the service as above set forth, there shall be deducted from the maximum total amount thereof the sums paid to such individual in such current benefit year prior to his entry into the service as aforesaid; and provided further, that the maximum total benefits after such deduction shall not be less than the minimum amount provided in the top line of Column D of Section 3(b) of the South Carolina Unemployment Compensation Law effective July 1, 1941.

1. Where a benefit year was current prior to July 1, 1941, the total available credits and weekly benefit amount for such individual shall be computed pursuant to the provisions of the South Carolina Unemployment Compensation Law in effect at the date of the commencement of such prior benefit year, or pursuant to the provisions of the South Carolina Unemployment Compensation Law in effect on July 1, 1941, whichever computation shall be to the greater advantage of such individual.

D. With respect to the benefit year as defined in Paragraph B hereof, the base period of an individual for whom no benefit year was current upon the date of his entry into the service, as aforesaid, shall be the four completed calendar quarters immediately preceding the date of his entry into such service and that portion of the quarter during which such individual was inducted into such service, as aforesaid, computed to the date of his entry into such service.

E. The base period for any such individual for the purpose of the first benefit year, as defined in Section 19(p) of the South Carolina Unemployment Compensation Law, subsequent to the benefit year as defined in Paragraph B hereof shall be the first four of the last five completed calendar quarters immediately prior to the filing of a valid claim, exclusive, however, of the quarter in which such individual entered such service, the quarters during which such individual was in such service, and the quarter in which the service of such individual was terminated; provided, however, that in the computation of wage credits for such base period the wages paid to such individual in the fraction of the quarter in which he entered such service, and the wages paid to such individual in the fraction of the quarter in which such service was terminated, shall be computed in arriving at his weekly benefit amount and total available credits, provided that such fractions of quarters fall within the total period of time covered by such base period as herein defined.

F. The provisions of Section 4(d) of the South Carolina Unemployment Compensation Law with respect to the waiting period shall not be applicable to the benefit year as defined in Paragraph B hereof.

G. The provisions of Section 5 of the South Carolina Unemployment Compensation Law shall not apply to any individual after the termination of his military service, as aforesaid, by reason of any act or cause of action on his part provided for in Section 5 of the Unemployment Compensation Law occurring prior to the date of his entry into such service.

H. Any individual, as provided for above, shall be ineligible for benefits for any week with respect to which or a part of which he has received or is seeking unemployment bene-

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fits under an unemployment compensation law of the United States. (Filed Secretary of State's office January 17, 1946.)

1. All other provisions of the South Carolina Unemployment Compensation Law not inconsistent with the above and foregoing provisions shall apply to the payment of claims for benefits filed hereunder.

Regulation XX. Payment of benefits to interstate claimants and the combination of wage credits:

(Filed Secretary of State's office September 7, 1946.)

Section 1. The following regulations shall govern the South Carolina Employment Security Commission, in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

A. DEFINITIONS:

As used in this regulation, unless the context clearly requires otherwise:

1. "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.
2. "Interstate Claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable States. The term "interstate claimant" shall not include any commuter provided, however, that the Commission may, by arrangement with any adjoining State employment security agency, treat certain commuters as interstate claimants if they reside in geographical areas from which the Commission finds that requiring commuters to file their benefit claims in the State of their last employment would cause undue hardship to such claimants. As herein used, the term "commuter" applies to each individual who, before becoming unemployed, customarily commuted from his residence in the agent State to his work in the liable State.
3. "State" includes Alaska, Hawaii, and the District of Columbia.
4. "Agent State" means any State in which an individual files a claim for benefits from another State.
5. "Liable State" means any State against which an individual files, through another State, a claim for benefits.
6. "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any State.
7. "Week of unemployment" includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed. With respect to an individual attached to his regular employer, week of unemployment means the seven-consecutive-day period prescribed by the agent State with respect to his employer.

B. REGISTRATION FOR WORK:

1. Each interstate claimant shall be registered as unemployed and for work, through any public employment office in the agent State when and as required by the law, regulations, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.
2. Each agent State shall duly report, to the liable State in question, whether each interstate claimant meets the registration requirements of the agent State.

C. EXHAUSTION OF CREDITS IN AGENT STATE AND ORDER OF SUCCESSION OF LIABLE STATE:

1. If a claimant is qualified for benefits under the unemployment insurance laws of two or more States, his claims shall be forwarded to and his benefits shall be paid by these States in inverse order to that in which such benefit rights were earned, with the following exceptions: If the claimant is qualified for benefits under the unemployment insurance law of the State where he is, he may either file against and exhaust or otherwise terminate those rights before filing an interstate claim, or he may exhaust or otherwise terminate his benefit rights on any interstate claim before filing against the State where he is.
2. After an interstate claimant has (in accordance with paragraph 1) been determined to be eligible for benefits by a given State, the agent State shall thenceforth take his claims for benefits solely against such state unless and until his available benefit credits are exhausted or otherwise terminated in such State, at which time paragraph

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1 shall again apply. If an intrastate claimant moves to another State in which he is qualified for benefits, he shall continue his claim as an interstate claim against the State from which he moved until his benefits there are exhausted or otherwise terminated prior to his claiming benefits from any other State.

3. For purposes of this regulation, benefit credits shall be deemed to be unavailable whenever an individual is not entitled to receive benefits based thereon by reason of seasonal restrictions upon the payment of benefits or a disqualification for an indefinite period or for the entire period in which benefits would otherwise be payable on the basis of such credits, or by reason of cancellation of such credits. Benefit credits shall be deemed to be available during any fixed period of temporary disqualification if in the absence of further disqualification benefits will thereafter be payable on the basis of such credits.
4. Benefit credits in any State shall be deemed to be unavailable (solely for partial unemployment benefit purposes) if that State does not provide for the interstate payment of partial unemployment benefits.
5. The order of succession of liable States established by this regulation shall apply only with respect to new claims (notices of unemployment) filed on or after April 1, 1951.

D. CLAIM FOR BENEFITS:

1. Claims for benefits or waiting-period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.
2. Claims shall be filed weekly in local employment offices, or by mail in accordance with agent-State regulations for intrastate mailed claims, or in accordance with the schedule provided by itinerant service.
 - (a) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.
 - (b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable State shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent State.

E. DETERMINATION OF CLAIMS:

1. The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.
2. The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an interstate claim.

F. APPELLATE PROCEDURE:

1. The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.
2. With respect to the time limits imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.

G. EXTENSION OF INTERSTATE BENEFIT PAYMENTS TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA.

This regulation shall apply in all its provisions to claims taken in and for Canada. (Filed Secretary of State's office August 14, 1952.)

Section 2. This section shall apply in the instances of claimants who have earnings in covered employment in one or more participating states but who at the time of filing of initial claim are not eligible to receive benefits under the general provisions of the Un-

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employment Compensation Law of the state in which such claim is filed or of any other state which is operating under the Interstate Benefit Plan.

A. DEFINITIONS:

1. "Participating State" means a state which has accepted the Plan.
2. "Combined-Wage Claimant" means a claimant who has earnings in covered employment in more than one participating state but who at the time he files his initial claim, is not eligible to receive benefits under the general provisions of the Unemployment Compensation Law of the state in which he files such claims or of any other state which is operating under the Interstate Benefit Payment Plan.
3. "Paying State" means the state in which the claim has been filed.
4. "Transferring State" means a participating state which transfers to the "paying state" a record of wages currently available in such state for the payment of benefits, any part of which is used by the paying state to determine the benefit rights of a combined-wage claimant.

B. FILING OF CLAIMS:

A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the Unemployment Compensation Law of the paying state.

C. LIABILITY FOR PAYMENT OF BENEFITS:

Benefits shall in all cases be paid to a combined-wage claimant from the unemployment fund of the paying state, even if such claimant has no earnings in covered employment in that state.

D. DETERMINATION OF CLAIMS:

1. Wages paid to such claimant during the paying state's applicable base period, and reported for that period by a transferring state as currently available for the payment of benefits, shall be included by the paying state in determining such claimant's benefit rights.
2. Wages once they have been reported by a state as a transferring state and used as the basis for determination of benefits in another state as the paying state shall be unavailable for determining or paying benefits under the Unemployment Compensation Law of the transferring state, except to the extent that wages are usable for redetermination purposes or are subject to reuse within said transferring state by reason of a rolling base period.
3. The benefit year, base period, qualifying wages, benefit rate and duration of benefits under the Unemployment Compensation Law of the paying state shall be the benefit year, base period, qualifying wages, benefit rate and duration of benefits applicable to a combined-wage claimant. A combined-wage claimant's rights shall be determined by the paying state after combining all wages reported as currently available for the payment of benefits to the paying state by transferring states that such claimant earned during the base period of the paying state with his wages earned, if any, in the paying state during said base period. All other applicable provisions of the Unemployment Compensation Law and rules and regulations of the state agency of the paying state shall be applicable to a combined-wage claimant.

E. REPORTS:

Each participating state shall, with respect to any combined-wage claimant, in utilizing forms approved by the Committee:

1. Promptly request each participating state in which the claimant has worked in the base period of the paying state to furnish a report on the claimant's wages for covered employment during the base period of the transferring state and on his current eligibility under the law of such state.
2. When acting as transferring state, report promptly on request of any participating state the following:
 - (a) The claimant's wages for covered employment during the base period of the transferring state;
 - (b) The amount of any such wages which are available for benefit payment purposes;
 - (c) The current eligibility of the claimant under the law of the transferring state.
3. When acting as paying state, send to each transferring state a copy of its initial determination, together with an explanatory statement.
4. When acting as paying state, send to the claimant a copy of its initial determination, noting his rights to appeal.

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5. When acting as paying state, send to each transferring state a quarterly statement of the benefits chargeable to each such state. Each such charge shall bear the same ratio to the total benefits paid to the combined-wage claimant by the paying state as his wages, reported by the transferring state and used in the paying state's determination, bear to the total wages used in such determination.

F. REIMBURSEMENT OF PAYING STATE:

A transferring state shall, as soon as practicable after receipt of a quarterly statement as set forth in item E, paragraph 5, hereof, reimburse the paying state accordingly.

G. EXCEPTION TO COMBINED WAGES:

A claimant's wages shall not be combined, notwithstanding any other provision of this Arrangement, if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the Interstate Benefit Payment Plan shall apply to such claimant.

H. A claimant's wages shall no longer be combined if the paying state finds that he has become eligible for benefits under its Unemployment Compensation Law.

I. TERMINATION OF COMBINING WAGES:

Combining of wages terminates upon the termination of the benefit year in the paying state or at such time as redetermination of benefit rights becomes necessary under the law of the paying state.

J. RELATION TO INTERSTATE BENEFIT PAYMENT PROCEDURES:

Whenever this Plan applies, it shall supersede any inconsistent provisions of the Interstate Benefit Payment Plan and the Regulations thereunder.

Regulation XXI. Meaning of terms:

Unless the context provides otherwise, terms used in rules, regulations, interpretations, forms and other official pronouncements issued by the Commission shall, with respect to all terms which are defined in the Act, be construed in the sense in which they are therein defined.

Regulation XXII. Public employment office:

The term "public employment office" as used in the South Carolina Unemployment Compensation Law with respect to the payment of benefits and as used in each rule, regulation, instruction, procedure or other matter promulgated by the South Carolina Employment Security Commission pursuant to the South Carolina Unemployment Compensation Law shall be construed to mean a free public employment office operated by the State or the United States Employment Service.

Regulation XXIII. Rescission of previous rules and regulations:

All rules and regulations or parts of rules and regulations hitherto at any time adopted are hereby rescinded, repealed and annulled.

Regulation XXIV. Time for Filing of Claims:

(Filed Secretary of State's office June 20, 1950.)

A. Effective July 1, 1950, claimants for unemployment compensation benefits shall be required to report and file claims weekly in such manner and in accordance with such procedures as the Commission may adopt unless the Commission shall prescribe for the bi-weekly filing of claims, as set out below.

B. The Commission may at any time direct that claimants for unemployment compensation benefits shall be required to report and file claims bi-weekly in such manner and in accordance with such procedure as the Commission may adopt. The following provisions shall apply during any period with respect to which the Commission directed the bi-weekly filing of claims.

1. All bi-weekly claims filed on the date specified for claimant's reporting shall be deemed to have been taken for the period of unemployment covered by the claim.
2. Delay may be excused for cause in accordance with the provisions of Regulation XII(E)(3) for not exceeding fourteen days following the date specified for the claimant's reporting.
3. The provisions of Regulation XII(A)(2) and (C)(2) are also amended to allow bi-weekly reporting.
4. Any claimant who returns to work on or before his next scheduled bi-weekly per-

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sonal reporting date may file with the Local Office, by mail, a report of "Return to Work", and such report shall be deemed a continued claim for the intervening preceding week or weeks.

5. All portions of Commission regulations in conflict with the provisions of this regulation are hereby suspended.

Regulation XXV. Voluntary contributions:

(Filed Secretary of State's office April 7, 1948.)

The required contribution rate of each employer for every calendar year is by law determined on the basis of his record as of June 30 of the preceding calendar year. Any employer wishing to obtain the benefit of a lower rate of required contributions in any calendar year through the payment of voluntary contributions in the preceding calendar year must pay such voluntary contributions prior to November 1 of the preceding year and such voluntarily paid contributions will be received only for the quarter ending June 30 of that year. Any employer will be furnished upon request with a statement of his account as of June 30. Such statement shall show the total contributions he has paid (required payments of contributions for the quarter ending June 30 shall be considered as paid on June 30 if same are paid by the employer before July 31) and the total charges against his account for benefits paid and charged thereto as well as the difference between these two totals. There shall also be shown the employer's "average annual payroll" for three and for five years.

Regulation XXVI. Employer elections to cover multi-state workers:

(Filed Secretary of State's office January 24, 1952.)

A. Relation to Subscribing States:

The following regulation, adopted under Section 18 of the Unemployment Compensation Law, shall govern the Employment Security Commission of South Carolina in its administrative cooperation with other States subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the arrangement".

B. Definitions: As used in this regulation, unless the context clearly indicates otherwise:

1. "Jurisdiction" means any State of the United States, the District of Columbia, Alaska, Hawaii, Canada, or, with respect to the Federal Government, the coverage of any Federal unemployment compensation law;
2. "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;
3. "Agency" means any officer, board, commission or other authority charged with the administration of the Employment Security Law of a participating jurisdiction;
4. "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and "interested agency" means the agency of such jurisdiction;
5. "Services 'customarily performed' by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services give reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

C. Submission and Approval of Coverage Elections Under the Interstate Reciprocal Coverage Agreement:

1. Any employing unit may file an election on a form provided by the Commission to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction.
Such an election may be filed, with respect to an individual, with any participating jurisdiction in which
 - (a) Any part of the individual's services are performed;
 - (b) The individual has his residence; or
 - (c) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.
2. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of

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each other participating jurisdiction specified thereon, under whose Employment Security Law the individual(s) in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency, may before taking such action, require from the electing employment unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

3. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the employing unit of its action and of its reasons therefor.
4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.
An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.
5. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

D. Effective Period of Elections:

1. Commencement: An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.
2. Termination:
 - (a) The application of an election to any individual under this regulation shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.
 - (b) Except as provided in sub-paragraph 1, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.
 - (c) Whenever an election under this regulation ceases to apply to any individual under sub-paragraph 1 or 2, the electing unit shall notify the affected individual accordingly.

E. Reports and Notices by the Electing Unit:

1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.
2. Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose employment security law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.
3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

F. Approval of Reciprocal Coverage Elections:

1. The Employment Security Commission of South Carolina hereby delegates to its Executive Director authority to approve or disapprove reciprocal coverage elections in accordance with this regulation.

SEASONAL RULES

(Filed Secretary of State's office September 20, 1943.)

Rule I. Seasonal determinations

A. The Commission shall either on its own initiative or upon receipt of application from an employer or an employee make an investigation and hold a hearing for the purpose of ascertaining and determining whether an occupation or industry is a "seasonal industry" and the seasonal period of such industry. The Commission shall give adequate notice of the hearing to the employers and employees of the occupation or industry under consideration. Such notice shall consist of publication in newspapers of general circulation, the posting of notices at the places of employment of the occupation or industry, notification to the representatives of workers concerned, and such other methods as the Commission deems necessary.

B. The Commission shall from time to time either on its own initiative or upon receipt of application from an employer or employee determine whether a reconsideration of the seasonality or the seasonal period of an occupation or industry is necessary in view of changed conditions or new facts discovered since the original determination. If the Commission determines that a reconsideration is necessary it shall make an investigation and hold a hearing after giving adequate notice as prescribed in paragraph A of this section and either affirm, amend, or rescind its original determination.

C. Certified copies of all determinations shall be maintained in the office of the Commission and shall be accessible for examination at all times during business hours.

Rule II. Seasonal industry

A. An industry shall be deemed to be a "seasonal industry" if the Commission finds with respect thereto that the number of individuals employed in employment by such industry during each of the three (3) calendar years preceding the calendar year in which the determination is made has declined to a point as low as thirty-three and a third ($33\frac{1}{3}\%$) per cent of the average number of individuals employed in employment by such industry during the three (3) consecutive months in each such year in which the number of individuals was highest, and has remained at or below such thirty-three and a third ($33\frac{1}{3}\%$) per cent for approximately the same period of more than twelve (12) weeks in each of such three (3) years. PROVIDED, However, That no industry shall be deemed to be a "seasonal industry" unless the members thereof exhibit a reasonable degree of similarity as to functions discharged, types of product produced or service rendered, and period of operations.

B. When the Commission determines an employer or a group of employers to be an industry and to be seasonal, all employers engaged in such industry shall be deemed "seasonal employers". All occupations in such industry shall be deemed, for the purposes of this Rule, to be parts of that seasonal industry, except that the individuals employed in an occupation within such industry shall not be deemed to be employed in a seasonal industry if the Commission finds upon investigation that such occupation considered by itself does not meet the conditions of being a seasonal industry.

C. If the Commission finds that the seasonal period of an occupation within a seasonal industry as defined in Rule III, below, differs either in beginning or ending date or both from the seasonal period of the industry of which it is a part by as much as one month, then the Commission may determine such occupation to be a seasonal industry in itself, and may determine for it such seasonal period distinct from that of the industry in which it is found.

Rule III. Seasonal period

The "Seasonal Period" of a seasonal industry shall include all those months of a year in which the number of individuals employed in employment in such industry remained above thirty-three and a third ($33\frac{1}{3}\%$) per cent of the average number of individuals employed in employment in such industry during the three (3) months of highest employment in that year of the three (3) years preceding the date of determination in which the number of such months was the greatest.

Rule IV. Seasonal worker

A "seasonal worker" is hereby defined to be an individual who, during each of the two periods composed respectively of the first four of the last nine completed calendar quarters and the second four of the last nine completed calendar quarters immediately preceding the first day of the individual's benefit year, has earned more than fifty percent

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(50%) of his total wages in seasonal industry during the seasonal period thereof and has earned less than thirty-three and a third percent ($33\frac{1}{3}\%$) of his total wages in off-season employment outside of seasonal industry; or an individual who has earned all of his wages during each of such two periods only in seasonal industry and only during its seasonal period. (Filed Secretary of State's office June 2, 1944.)

Rule V. Benefit rights of seasonal workers

A. A seasonal worker shall be entitled to benefits only with respect to a week of unemployment which occurs, or the greater part of which occurs, within the seasonal period of the seasonal industry in which such worker was employed to the extent required by Rule IV above.

B. Except as specified in Rule V-A above, there shall be no difference between the benefit rights of a seasonal worker and those of an individual who is not a seasonal worker. In computing the benefit rights of a seasonal worker, all his wages earned in employment for employers whether members of a seasonal industry or not shall be considered.

C. With regard to an individual who has worked during his base period in more than one seasonal industry, the terms seasonal industry and seasonal period as herein used shall mean respectively and only that seasonal industry in which such individual earned more wages than he did in any other seasonal industry, and the seasonal period of such particular seasonal industry.

Rule VI. Notice of seasonal determination

Within ten (10) days after a determination that an industry is a seasonal industry, every employer engaged in such industry shall post and maintain in all departments of each establishment or unit of such industry wherein individuals affected by such determination are or may be employed, a notice setting forth that the industry has been determined to be seasonal, the occupations therein that have been determined to be seasonal, the seasonal periods of such occupations and industry as determined by the Commission, and that unemployment compensation rights of seasonal workers are subject to restriction as provided in Seasonal Rule V of the Commission.

Rule VII. Furnishing printed information to workers

Whenever a seasonal employer partially or totally separates any worker in a seasonal occupation permanently or for an indefinite period or for an expected duration of seven (7) days, or more, he shall deliver to such worker within twenty-four (24) hours after such separation, in person or by mailing to the worker's last known address, if personal delivery is impossible or impracticable, a copy of informational circular UCI-110, as provided by the Commission, which explains the rights to unemployment compensation benefits by a seasonal worker. Such circulars shall inform the worker to report promptly to the nearest Employment Service office and shall contain the address of that office. The worker shall also be furnished with a copy of informational circular, pamphlet, or publication UCI-101.

Rule VIII. Effect of rules

In all respects not in conflict with these Rules for Seasonal Industries all sections of the South Carolina Unemployment Compensation Law and the General Rules and Regulations shall govern the rights and duties of the respective parties.

Rule IX. Reports

Every seasonal employer shall make such reports as are prescribed by the Commission on forms issued by and required to be returned to the Commission.

Appeal Regulations.

(Filed Secretary of State's office March 21, 1950.)

1. Appeals to appeal tribunal

A. The Presentation of Appeals

(1) The party appealing from an initial determination of a claims examiner shall file at the office where the claim was filed, or at the office of the Commission in Columbia, South Carolina, a Notice of Appeal on the form provided, setting forth the information required thereon. Copies of the Notice of Appeal shall be mailed to the other interested parties to the initial determination of the examiner which is being appealed.

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(2) The party appealing from a determination of an examiner rendered subsequent to the issuance of an initial determination shall file a Notice of Appeal in like manner and place as is provided for appeal from an initial determination in Appeal Regulation 1-A-(1) above, which shall be treated in the same manner as is therein provided.

(3) The party appealing from a redetermination shall file Notice of Appeal as provided for in Appeal Regulation 1-A-(1) above, which shall be treated in the same manner as an appeal from an initial determination: PROVIDED THAT, where there is pending an appeal from an initial determination, such appeal, unless withdrawn, shall likewise constitute an appeal from such redetermination.

(4) In cases where Section 5(d) of the Act is involved, and initial determination in the case has been made by a special examiner designated therefor by the Commission, the party appealing from the initial determination of such special examiner shall file a Notice of Appeal in like manner as provided for in Appeal Regulation 1-A-(1) above, which shall be treated in the manner prescribed in that Regulation.

(5) Upon the scheduling of a hearing for an appeal, Notice of Hearing upon the form provided shall be mailed at least seven (7) days prior to the date of hearing, specifying the place and time of hearing, and the hearing official, to all interested parties to the appealed claim.

(6) No additional hearings shall be allowed on the same appeal before the Appeal Tribunal except those subject to Appeal Rules 1-D-(1), 1-D-(2) and 1-C-(1)(2)(3).

B. Disqualification of Members of Appeal Tribunals

No person shall serve on an Appeal Tribunal in the hearing of any appeal in which he is interested. Challenges to the interest of any person serving on an Appeal Tribunal may be heard and decided by the Appeal Tribunal, or in its discretion referred to the Commission.

C. Hearing of Appeals

(1) All hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. Any party to the appeal may present such oral or written testimony as may be pertinent to the appeal. Where a party appears in person, the Tribunal shall examine and cross-examine such party and his witnesses, and may examine and cross-examine the witnesses of any opposing party. The Appeal Tribunal, with or without notice to any of the parties, may take such additional evidence at the hearing as it deems necessary. After a hearing and prior to actually rendering the decision, the Appeal Tribunal with notice to the interested parties as provided for in Appeal Regulation 1-A-(5), may call the parties and any witnesses to appear before it for the taking of such additional evidence as it deems necessary.

(2) The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate the facts involved in writing. The stipulations agreed upon shall be included in the record of the case. The Appeal Tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence or hearing arguments, as it deems necessary to determine the appealed claim.

(3) The Appeal Tribunal, during the conduct of any hearing, may indicate to the reporter portions of the testimony that it wishes transcribed to aid it in preparing findings of fact and decision.

D. Adjournments of Hearings

(1) The Appeal Tribunal shall use its best judgment as to when adjournments of a hearing shall be granted, in order to secure all the evidence that is necessary and to be fair to the parties to the appeal.

(2) If the claimant fails to appear at the hearing, the Tribunal shall not issue a decision for a period of five days. If within such time the claimant applies for an adjourned hearing and the Tribunal finds that there was good cause for the claimant's absence, an adjourned hearing may be approved and parties so notified.

E. The Determination of Appeals

(1) Following the conclusion of hearing of an appeal, the Appeal Tribunal shall, as soon as possible, announce its findings of fact and decision with respect to matters or issues of the appeal. The decision shall be in writing. The Tribunal shall set forth its findings of fact, its decision, and the reasons therefor.

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(a) The Appeal Tribunal may pass upon any offer of work, separation, or question of availability arising between the filing of an appeal and the Appeal Tribunal hearing in those cases in which the benefit Section has issued no determinations with respect to such subsequent issues.

(b) The Appeal Tribunal may pass upon any issue framed prior to the filing of the appeal or the determination from which the appeal is taken, and with respect to which no determination has been issued by the Benefit Section.

(c) The Appeal Tribunal at a hearing may receive and consider appeals from determinations issued subsequent to the determination and appeal giving rise to the hearing, provided such appeals are timely.

(d) Subparagraphs (a)(b)(c), *supra*, will apply *only* when the parties are identical and present at the Appeal Tribunal hearing and/or properly notified of the issue or issues.

(2) Copies of all decisions and the reasons therefor shall be mailed to all parties to the appeal, to the Claims Examiner, and to the Commission.

2. Appeals to the Commission as a board of review

A. The Presentation of Application for Leave to Appeal to the Commission

(1) Any interested party to the decision of an Appeal Tribunal which is unanimous, may apply for leave to appeal from such decision to the Commission, by filing at the office where the claim was filed, or at the office of the Commission in Columbia, South Carolina, within ten (10) days after the date of notification or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to Commission on the form provided, setting forth the information required thereon. Such application may be accompanied by reference to or excerpts from the original record of the hearing before the Appeal Tribunal. Copies of the Application for Leave to Appeal shall be mailed to all interested parties to the decision of the Appeal Tribunal.

(a) The Commission may grant or deny any Application for Leave to Appeal, filed under Regulation 2-A-(1), without hearing; or may notify the interested parties to appear before it at a specified time and place for argument upon the application. Notices of such hearing for argument upon application, shall be mailed the interested parties to the decision of the Appeal Tribunal at least seven (7) days before the date of the hearing. The Commission shall specify the matters to be heard and the place and time of hearing.

(b) Copies of the Commission's decision on any Application for Leave to Appeal shall be mailed to all interested parties to the decision.

(c) If leave to appeal to the Commission is granted, the Commission shall schedule a hearing. Notice of hearing on the form provided shall be mailed at least seven (7) days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.

(2) Any interested party to the decision of an Appeal Tribunal, which is not unanimous, may apply for leave to appeal from such decision to the Commission by filing at the office where the claim was filed, or at the office of the Commission in Columbia, South Carolina, within ten (10) days after the date of notification or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to Commission on the form provided setting forth the information required thereon. Such application may be accompanied by reference to or excerpts from the original record of the hearing before the Appeal Tribunal. Copies of the Application for Leave to Appeal shall be mailed to all interested parties to the decision of the Appeal Tribunal.

(a) The Commission shall ascertain in the case of every Application for Leave to Appeal to Commission if the decision of the Appeal Tribunal was unanimous. If the decision was not unanimous, the appeal shall be allowed without further consideration.

(b) Copies of the Commission's decision to allow the appeal shall be mailed to all interested parties to the decision.

(c) The Commission shall schedule a hearing when the appeal is allowed. Notice of Hearing on the form provided shall be mailed at least seven (7) days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.

B. Hearing of Appeals

(1) Except as provided in Appeal Regulation 2-D for the hearing of appeals re-

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moved to the Commission from an Appeal Tribunal, all appeals to the Commission shall be heard solely upon the evidence in the record before the Appeal Tribunal.

(2) In the hearing of an appeal upon the record, the Commission may limit the parties to oral argument, or may permit the filing of written argument, or both.

C. The Review of Decisions of Appeal Tribunals by the Commission on Its Own Motion

(1) Within ten (10) days following a decision by an Appeal Tribunal, the Commission on its own motion may remove any decision to its own jurisdiction for review and may affirm, modify, or set aside such decision on the basis of the evidence previously submitted in such case, or may direct the taking of additional evidence.

(2) The Commission shall in such cases allow the parties an opportunity to present their views before it with seven (7) days notice thereof to all parties interested.

(3) Where the Commission directs the taking of additional evidence, it shall be taken in the manner prescribed for the conduct of hearings on appeals before the Appeal Tribunal, including seven (7) days' notice to the parties interested. Upon the completion of the taking of evidence and testimony pursuant to the direction of the Commission, the same shall be returned to the Commission for its consideration and decision.

D. The Hearing by the Commission on Appeals Ordered Removed to It from an Appeal Tribunal

(1) Any appeal before an Appeal Tribunal, ordered by the Commission to be removed to itself prior to hearing by the Appeal Tribunal, shall be presented, heard, and decided by the Commission in the manner prescribed in Regulation 1-C-(1), (2), and (3), for the hearing of appeals before the Appeal Tribunal.

(2) Any appeals heard by an Appeal Tribunal may, prior to a decision by the Tribunal, be ordered by the Commission to be removed to itself and shall then be presented, heard and decided by the Commission in the manner prescribed in Appeal Regulation 2-C-(2) and (3).

E. The Decisions of the Commission

(1) Appeals before the Commission may be heard by any two members thereof constituting a quorum. The Commission shall, as soon as possible, announce its findings and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Commission who heard the appeal. It shall set forth with respect to the matters appealed, the findings of fact of the Commission, its decision, and the reasons for such decision.

(2) If a decision of the Commission is not unanimous, the decision of the majority shall control. The minority may be recorded as dissenting or file a written dissent from such decision, which shall set forth the reasons for failure to agree with the majority.

(3) Copies of all decisions and the reasons therefor shall be mailed by the Commission to the interested parties.

3. Issuance of subpoenas

A. Subpoenas to compel the attendance of witnesses and the production of records for any hearing of an appeal, shall be issued by the Commission or its authorized representative, a member of the Commission or an Appeal Tribunal.

B. Subpoenas for witnesses shall be issued only for the witnesses shown to be necessary in the application.

C. Witnesses subpoenaed for any hearing before an Appeal Tribunal or the Commission shall be paid witness and mileage fees by the Commission in accordance with the following schedule

(1) Witness fee One (\$1.00) Dollar per diem or fraction thereof.

(2) Mileage fee Five (5¢) Cents per mile, from place of residence to place of hearing and return.

In no case shall witness fee or mileage exceed that allowed witnesses in the Court of Common Pleas of the County in which the hearing is held.

4. Orders for supplying information from the records of the agency

A. Orders for supplying information from the records of the Employment Security Commission to a claimant or his duly authorized representative, to the extent necessary for the proper presentation of a claim, shall issue only upon application therefor, which shall state, as nearly as possible, the nature of the information desired, and its relevancy to the claim.

RULES AND REGULATIONS

B. In all cases where an order to supply a claimant or his duly authorized representative with information from the records is issued, the party shall be furnished such information.

5. Representation before Appeal Tribunal and the Commission

A. Any individual may appear for himself in any proceeding before an Appeal Tribunal or the Commission. Any partnership may be represented by any of the partners. An association may be represented by any of the members of such association. A corporation may be represented only by an attorney at law, except that any employer or agent of a corporation may give factual information to the Commission or its Appeal Tribunal. Representatives of labor unions, employee or employer organizations, may appear and give factual information or data which will be pertinent or helpful to the determination of the issues before the Commission or its Appeal Tribunal.

B. Any party may be represented by an attorney at law who is admitted to practice before the Supreme Court of South Carolina or the highest court of any of the States of the United States before any Appeal Tribunal or the Commission.

C. The Commission, or the Appeal Tribunal, in its discretion, may refuse to allow any person to represent others in any proceeding before it, who it finds is guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the South Carolina Employment Security Law, or the Rules, Regulations, and/or instructions of either the Tribunal or the Commission.

6. Inspection of the decisions of the Appeal Tribunals and the Commission

A. Originals of all decisions of the Appeal Tribunal and the Commission shall be kept on file at the office of the South Carolina Employment Security Commission, Columbia, South Carolina, and shall be subject to inspection by the parties thereto, or their duly authorized representatives, subject to the provisions of sub-sections (g) and (m) of Section 11 of the Act.

B. Copies of the complete file of decisions of Appeal Tribunal and the Commission shall be open to the public for inspection, but such copies shall not reveal the identity of the parties.

7. Appeal to the courts

A. Any party to the appeal before the Commission who has exhausted his remedies before the Commission may, within ten (10) days after the decision of the Commission has become final, file a petition with the Court of Common Pleas for the County in which the employee resides or the County in which he was last employed, for a review of the decision of the Commission.

B. The party filing the petition for the review shall serve a copy of the petition upon the Commission by delivering a copy to the Secretary of the Commission at Columbia, South Carolina.

Engineering Examiners, State Board of.

ADOPTED BY THE SOUTH CAROLINA STATE ENGINEERING EXAMINERS BOARD.

Pursuant to § 56-711, S. C. Code of 1952.

(Filed in Secretary of State's office August 30, 1951, except as otherwise noted.)

1. Meetings

The Board will hold four meetings a year, spaced approximately three months apart, the dates to be selected by the Chairman and the Secretary. Special meetings may be called by the Chairman at his discretion or at the request of three members of the Board, provided that at least five days notice in writing be given to every member of the Board. Meetings will be held at such place as a majority of the Board may direct. A majority of the Board shall constitute a quorum.

2. Election and duties of officers

The officers of the Board shall be elected at the regular Summer meeting of the Board, and shall hold office until their successors are elected and qualified.

The Chairman, and in his absence the Vice Chairman, shall perform the usual duties of this office.

The Secretary shall keep a careful record of all proceedings of the Board, act as custodian of all records, the seal, and other property and papers belonging to the Board. He shall prepare annually and submit to the Board a written report covering the trans-

CODE OF LAWS OF SOUTH CAROLINA

actions of the Board for the fiscal year immediately preceding, together with a list of all land surveyors and professional engineers registered under the authority of the Act, with their addresses and date of registration; and a complete statement of all receipts and expenditures for the fiscal year. This report will be signed by the Chairman and the Secretary and forwarded to the Governor and a copy filed with the Secretary of State, all of which as required by said Act.

The Secretary will be furnished such clerical assistance and paid such salary as the Board may direct.

The Secretary will give a surety bond in the sum of three thousand (\$3,000.00) dollars, as provided in the Act, said bond to be approved by the Board.

3. Seal of the Board

The seal of the Board shall be circular in form and $1\frac{7}{8}$ inches in diameter. Concentric with the outside of the seal there shall be a circle $1\frac{1}{4}$ inches in diameter, within which there shall be a replica of the device used on the Seal of the State of South Carolina, and in the annular space between the circle and the outside of the Seal there shall appear the words, "State Board of Engineering Examiners." All official papers, registration certificates, and other formal documents of the Board shall bear the imprint of this Seal.

4. Seal of registered engineers and land surveyors

The seal of engineers and land surveyors registered by the Board shall be $1\frac{9}{16}$ inches in diameter and similar to that prescribed for the Board. In the center there shall appear the words, "Registered Professional Engineer", in the case of engineers; the words, "Registered Land Surveyor", in the case of land surveyors; and the words, "Registered Professional Engineer and Land Surveyor", in the case of engineers and surveyors. In the space between the circle and the outside of the seal shall appear the words, "South Carolina" and the name of the registrant.

5. Annual renewal fees

All certificates of registration will expire on June 30 of each year unless renewed during the month of June in accordance with the provisions of the Act. On payment of the required annual renewal fee a renewal registration card will be issued to the registrant. The renewal fee for professional engineers shall be five (\$5.00) dollars and the renewal fee for land surveyors shall be three (\$3.00) dollars. In the case of a registrant who is registered as both professional engineer and land surveyor, only one fee of five (\$5.00) dollars shall be required. (Filed Secretary of State's office June 5, 1952.)

6. Applications for registration

All applications for registration must be made on the forms provided by the Board. No application will be considered unless properly filled in and sworn to before an officer authorized to administer oaths.

Applications for registration must be filed with the Secretary at least thirty days in advance of a meeting of the Board in order to be considered at said meeting, and must in all cases be accompanied by the required fee.

In the case of a candidate who applies for registration as both professional engineer and land surveyor at the same time, only one application fee of fifteen (\$15.00) dollars shall be required. The remaining ten (\$10.00) dollars of the registration fee as professional engineer shall be paid when registration is approved.

7. Examinations

When oral or written examinations are required the candidate will be notified by the Secretary as to the time and place of the examination. Examinations shall be given by the Board, or a Committee of the Board, or under the direction of the Secretary. In all cases final decision as to whether or not a candidate has passed a written examination, or shall be approved for registration, must be acted on by the full Board, or a quorum thereof, at a regular meeting of the Board.

Examination questions will be prepared by members of the Board or by qualified persons appointed by the Board to prepare and grade examination questions. When persons other than members of the Board are engaged to prepare and grade examination questions they shall be paid for their services such an amount as may be approved by the Board.

8. Reinstatement of expired certificates

Any registered professional engineer or registered land surveyor who submits to the Board an affidavit certifying that he has in no way practiced or offered to practice in

RULES AND REGULATIONS

South Carolina, professional engineering if an engineer, or land surveying if a land surveyor, during any registration year from July 1 to June 30, accompanied by a statement showing in detail all work performed during this period, may be exempted by the Board from payment of the annual renewal fee prescribed in Section 7078 of the Act [§ 56-733, S. C. Code of 1952], for the specific period stated in his affidavit, provided the application for reinstatement of registration is accompanied by the renewal fee for the current year.

9. Registrants of other states, registration by endorsement

The Board may, upon application therefor, properly prepared on the prescribed form and the payment of the fee of Fifteen (\$15.00) Dollars, issue a Certificate of Registration as a Professional Engineer to any person who holds a Certificate of Qualification issued to him by the National Bureau of Engineering Registration, or who is legally registered or licensed in any state or territory of the United States, or in any country, provided the applicant's qualifications meet the requirements of this Act and the rules established by the Board.

Health, State Board of.

ADOPTED BY THE SOUTH CAROLINA BOARD OF HEALTH.

(Pursuant to § 32-8, S. C. Code of 1952.)

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CODE OF LAWS OF SOUTH CAROLINA

Barbiturates.

Pursuant to § 32-1502 S. C. Code of 1952.

(Filed in the Secretary of State's office February 19, 1948.)

1. It shall be required that all prescriptions for barbiturates and barbiturate compounds not exempt by the act shall be filed on a separate file from the regular prescriptions.

2. A prescription for barbiturates or barbiturate compounds not exempt by the act may not be refilled during the period of the specified dosage after which it may be refilled twice within sixty days of the original prescription unless the prescriber specifies "do not refill."

3. A prescription for barbiturates or barbiturate compounds received over the telephone may be dispensed provided the signature of the prescriber is obtained within seventy-two (72) hours within the date of prescription. The physicians, dentists, or veterinarians prescribing the barbiturates or barbiturate compounds shall be equally liable with the dispensing druggists to see that the prescription is signed by him within the prescribed time.

4. Barbiturates not exempt by this act may be dispensed only by a licensed pharmacist, assistant pharmacist, or under the direct supervision of a licensed pharmacist.

Definitions and Explanation.

Prescription Required.

The sale, barter, or exchange of barbiturates and barbiturate compounds shall be restricted to the written prescription of a licensed physician, dentist or veterinarian.

Example: Phenobarbital, Sodium Phenobarbital, Amytal, Sodium Amytal, Sodium Seconal, Sodium Ortol, Nembutal, etc.

Exceptions: Barbiturate compounds containing one-fourth ($\frac{1}{4}$) or less of the standard dose of the barbiturate in compound with active medicinal ingredient or ingredients.

Example: Aminophyllin with Phenobarbital ($\frac{1}{2}$ gr.)

Barbidonna Tablets (Phenobarbital $\frac{1}{4}$ gr.)

Amesec, Ephedrine and Amytal (Amytal $\frac{3}{8}$ gr.)

"Standard dose": Average dose as given in U.S.P., N.F. or New and Non Official Remedies; or as given by manufacturer if not listed in any of these books.

Standard dose of	$\frac{1}{4}$ Standard dose
Phenobarbital 2 grains	{($\frac{1}{2}$ grain
Amytal 2 grains	
Seconal Sodium $1\frac{1}{2}$ grains	{($\frac{3}{8}$ grain
Nembutal $1\frac{1}{2}$ grains	
Sodium Amytal $1\frac{1}{2}$ grains	{($\frac{3}{8}$ grain
Sodium Ortol $1\frac{1}{2}$ grains	

Files and Retention of Barbiturate Prescriptions.

Prescriptions for barbiturates and barbiturate compounds not exempt by this act must be filed on separate file from other prescriptions. Files must be retained for three (3) years.

Exceptions: On prescriptions where the barbiturate is in combination with a Narcotic Drug, the prescription must be filed on the Narcotic file. Prescriptions for exempt preparations are to be filed on regular file.

Files must be open for inspection at all times by the State Board of Health.

Reports.

At least once every 12 months, on demand from the State Board of Health, each retail and/or wholesale pharmacist and/or druggist in this State must submit, under Oath, statements showing the amount of barbiturates and barbiturate compounds, not exempt by this section, *received* and *disposed* of, by them during some specified time. Statements shall also include such other information as said Board deems advisable in aiding it to carry out the provisions, purposes and intents of this section.

Refilling of Barbiturate Prescriptions.

Prescriptions for barbiturates may be refilled *twice* during the sixty day (60) period after issuance of the prescription, provided, that in so doing the prescribed dosage is not exceeded; unless otherwise specified by the prescriber. Date of refill must be listed on original prescription, or copy of original prescription placed on file.

RULES AND REGULATIONS

Prescribed Dosage.

Examples

- | | | |
|--|---|--|
| Rx Amytal Tablets # XXIV (24)
Sig: 1 at night. | } | These prescriptions may be refilled after the 24th day unless otherwise specified. |
| Rx Seconal Sodium Caps # XXIV (24)
Sig: 1 at night. | | |
| Rx Phenobarbital Tablets #100
Sig: 1 at night. | } | This prescription may not be refilled because the original prescription calls for a 100 day treatment. |

Telephone Prescriptions.

Prescriptions received over the telephone may be dispensed provided: the signature of the prescriber is obtained within 72 hours of the date of the prescription. The prescriber to be jointly liable with the pharmacist to see that signature is affixed within specified period of time.

Who May Dispense Barbiturates.

A prescription for a barbiturate or a barbiturate compound, not exempt by the act, may be dispensed *only* by a licensed pharmacist, a licensed assistant pharmacist, or by a person under the direct, personal supervision of a licensed pharmacist.

Bedding and Bedding Material; Sterilization, Labeling and Renovation.

(Filed in the Secretary of State's office June 16, 1949.)

1. The sterilization of bedding and bedding materials shall be in accordance with one of the following methods:

(a) *The dry heat method:* Loose materials or bedding shall be subjected to dry heat at a temperature of 230 degrees F. and maintained at that temperature for at least sixty (60) minutes. Dry heat sterilization apparatus shall be equipped with a suitable recording thermometer and with such control devices as will provide an adequate control of the temperature to be maintained.

(b) *The steam method:* Loose materials or bedding shall be subjected to direct steam under a pressure of 15 pounds per square inch and maintained at that pressure for at least thirty (30) minutes. A gauge for registering the steam pressure inside the sterilizer, and visible from the outside of the sterilizer, and a suitable recording thermometer shall be provided where steam sterilization is employed.

2. Bedding or bedding materials to be sterilized by the dry heat method shall be stood on end or placed upon shelves or other open construction with a space of not less than six (6) inches between, or shall be suspended by means of suitable hangers with space of not less than six (6) inches between bedding, or between bedding and floors, ceiling or side-walls. Shelving for bedding or loose bedding materials shall be of lattice or other open construction.

3. The recording thermometer used in either of the above methods shall be located as far as reasonably possible from the source of heat or steam entering the sterilization chamber, and in no event more than one (1) foot above the floor of the chamber. The temperature charts from the recording thermometer, together with entries thereon of the date and bedding or bedding materials sterilized, shall be kept by the person performing such sterilization for a period of at least one (1) year, and shall be available at all times for inspection by the State Board of Health or its agents. The said board or its agents may seal the recording thermometers on sterilization apparatus to prevent tampering or falsification of records, and any unwarranted removal or breakage of such seal shall be a violation of the act under which these regulations are issued.

4. Satisfactory compliance with these regulations as to sterilization shall be evidenced by a certificate which shall be issued by the State Board of Health to all persons who operate sterilization apparatus for bedding or bedding materials, such certificate of satisfactory compliance to be displayed at all times in a conspicuous place at the location or place of business where such sterilization is conducted. Such certificate may be revoked or removed without notice by the said Board or its agents upon failure to comply with or maintain the standards set up by these regulations and the act under which these regulations are issued; and such person shall be liable to the penalties provided for violation of the said act and regulations.

5. The labels to be attached to all articles of bedding as provided by the act, shall be furnished by the manufacturer or maker or seller thereof. A white label shall be used

CODE OF LAWS OF SOUTH CAROLINA

on bedding, as defined in the act, which is manufactured of all new materials. A yellow label shall be used on bedding, as defined in the act, that is manufactured or remade of previously used materials. The notation "Contents Sterilized" shall be entered upon such label where sterilization is required by the act.

6. All printing on said labels shall be in permanent ink on vellum cloth or a cloth of comparable quality, which shall not flake out when abraded; and exclusive of such portion allowed to affix the tag to the article, the minimum size of the tag shall not be less than six (6) square inches, but may be greater; and shall appear approximately as follows:

		← Space for Stitching
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW		
ALL NEW MATERIAL (or) PREVIOUSLY USED MATERIAL Consisting of (Description of Materials in Clear letters at least $\frac{1}{8}$ inch high)		← (White tags to Read thus) ← (Yellow tags to Read thus)
Reg. No. (For Use where other states require)		
(Space for Stamp)	Certification is made that the materials in this article are described in accordance with law.	
	CONTENTS STERILIZED	(Insert this in letters $\frac{1}{4}$ inch ← high where law requires sterili- zation of any part of article.)
(Name of Manufacturer or Vendor) (Address of Manufacturer or Vendor)		
(Additional Information)		← (For use of manufacturer or vendor)

7. An accurate and complete description of materials used in the filling of bedding, including the exact number of spring coils in spring units, shall be written or printed in permanent ink in the space provided on the said label.

8. Description of cotton filling material used in the manufacture of bedding shall be as follows:

COTTON and/or VIRGIN COTTON and/or STAPLE COTTON: This term shall mean the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed), containing no foreign material. The presence of the usual amount of leaves, hull, etc. shall not be considered foreign matter. This term shall be shown on the label.

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COTTON BY-PRODUCTS: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include only the following materials commonly known in cotton-mill terms as (1) cotton comber, (2) cotton card strips, (3) cotton fly and (4) cotton picker.

COTTON LINTERS: This term shall mean the fibrous growth removed from cottonseed in cotton-oil mills subsequent to the usual process of ginning and shall be so designated on the label.

COTTON WASTE: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton products but not including those grades defined as cotton by-products. Oil mill motes shall be included as cotton waste.

SHODDY: This term shall mean any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated and shall be so designated on the label as "Shoddy".

BLENDS OR MIXTURES: When two or more of the above materials are used in a product, they shall be described on the label as required above in the order of their predominance.

COTTON FELT: This term shall be used only when fibres are garnetted or carded and used in layer form. It cannot be used when cotton batting or cotton felt scraps or clippings are stuffed or blown in the same manner as unfelted materials. This term must be followed by a listing of the component materials as required above.

OIL PERCENTAGES: When any filling material contains more than five percent (5%) of oil, it must be described as "oily".

DIRT and/or FOREIGN MATERIAL: When any filling material contains more than five percent (5%) of dirt and/or any other foreign material it shall be described as dirt.

9. Any person supplying material to a bedding manufacturer, within the provisions of the bedding law, shall state in writing, upon the itemized invoice required thereunder whether each item of material is "all new" or "previously used" as defined in the bedding law.

10. The South Carolina Tax Commission, Columbia, South Carolina, will sell stamps required by the act in lots of not less than 250, or multiples thereof, at a cost of five (\$5.00) dollars per 250. Stocks of labels or stamps previously issued or provided by the State Board of Health or the State Tax Commission under this or previous bedding acts may be used by the purchaser thereof until such stocks are exhausted.

Bus Stations.

(Filed Secretary of State's office February 17, 1944.)

Section 1. General.

All bus stations, including their waiting rooms, lunch rooms, restaurants, wash rooms, and toilets, shall be kept in a clean and sanitary condition at all times.

Section 2. Cleaning.

All waiting rooms used by the public shall be swept and dusted daily; and at intervals of not more than seven days the floors shall be scrubbed with soap and water, and the seats, benches, counters and other woodwork shall be similarly scrubbed, or shall be rubbed down with a cloth moistened with oil.

Section 3. Sweeping.

If sweeping is done while rooms are occupied or open to occupancy by patrons, the floor shall be first sprinkled with wet sawdust or other dust-absorbing material.

Section 4. Dusting.

If dusting is done while rooms are occupied or open to occupancy by patrons, it shall be done only with cloths moistened with water, oil, or other dust-absorbing material.

Section 5. Spitting.

Spitting on the floors, walls, seats or platforms of stations is prohibited.

Section 6. Cuspidors.

In all waiting rooms where smoking is permitted, an adequate supply of cuspidors shall be provided; such cuspidors shall be cleaned daily, and oftener if their condition requires.

Section 7. Common cups.

Individual drinking cups in sufficient number shall be supplied in all stations, and the use of common drinking cups is prohibited.

Section 8. Common towels.

The supplying of roller towels or other towels for common use in bus stations is prohibited.

Section 9. Combs and brushes.

The supplying of combs and brushes for common use in bus stations is prohibited.

Section 10. Toilet facilities.

All bus stations where tickets are sold shall provide adequate toilet facilities, of a design approved by the state board of health, for the use of patrons and employees; and there shall be separate toilets for each of the two sexes. Adequate toilet facilities shall be as follows: a minimum of one stool for each ten women or less, and one stool and one urinal for each fifteen men or less. The number of stools to be determined by the number of buses and the capacity of the buses arriving at any station within a period of thirty minutes. Where a bus station is maintained in connection with a filling station separate toilet facilities shall be provided for the bus station from those maintained for the filling station.

Section 11. Station toilets.

If a bus station is located within 300 feet of a public sewer, water flushing toilets shall be installed and permanently connected with such sewer, and a wash basin or basins shall be located near the toilet and similarly connected; and such toilets and lavatories shall be kept in repair and in good working order at all times.

Section 12. Care of toilets.

All toilets installed as set forth in section 11, shall be cleaned daily by scrubbing the floors, bowls and seats with soap and water.

Section 13. Odors in toilets.

When offensive odors appear in toilets which are not obliterated and removed by cleaning as in section 12, said toilets shall be treated with a 2 per cent solution of formaldehyde or other odor-destroying substance.

Section 14. Toilet supplies.

Toilet and wash rooms installed as set forth in section 11, shall be constantly furnished with an adequate supply of toilet paper, soap and free or clean towels.

Section 15. Privies.

If no sewer connection is available as set forth in section 11, a sanitary privy of a design approved by the state board of health shall be maintained within a reasonable distance from the station. Such privy shall be adequately protected against the entrance of flies, shall be kept supplied with toilet paper, the seats shall be kept clean, and the vaults shall be cleaned out and emptied at such intervals as will avoid the development of a nuisance.

Section 16. Water and ice supplies—water to be certified.

Water provided by common carriers for drinking or culinary purposes in bus stations shall be taken from supplies certified by the United States public health service as meeting the required standards of purity and safety prescribed by the interstate quarantine regulations of the United States.

Section 17. Ice.

Ice used for cooling water provided as in section 16, shall be clean natural ice, ice made from distilled water, or ice made from water certified as aforesaid; and before the ice is put into the water it shall be washed with water of known safety, and handled in such a manner as to prevent its becoming contaminated by the organisms of infectious diseases: provided, that the foregoing shall not apply to ice that does not come in contact with the water to be cooled.

Section 18. Care of water containers.

All water containers where water and ice are put into same compartment shall be thoroughly cleansed at least once in each week that they are in use. All water containers

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and water storage tanks shall be thoroughly drained and flushed at intervals of not more than one month.

Section 19. Water not usable for drinking.

If water which does not conform to the standards set forth in section 16 of these regulations is available at any tap or hydrant, in any bus station, a notice shall be maintained on each tap or hydrant which shall state "Not fit for drinking."

Section 20. Drinking fountains.

If drinking fountains of the bubbling type are provided in any bus station, they shall be so made that the drinking is from a free jet projected at an angle to the vertical, and not from a jet that is projected vertically or that flows through a filled cup or bowl.

Section 21. Refuse cans.

At all bus stations where there is an agent, there shall be provided and maintained an adequate supply of open or automatically closing receptacles for the disposition of refuse and kept reasonably clean and free from odor. State laws with reference to restaurants shall apply to all restaurants and lunch rooms in bus stations.

Camps.

(Filed Secretary of State's office April 24, 1942.)

Section 1. Definition.

Camps shall be considered to include all camps and similar places of temporary abode. Tourist camp, within the meaning of these regulations, is defined to be a tract or parcel of land with or without buildings or other equipment, private or municipally owned, open to the public and designated to the public as a tourist camp and set aside for free or pay camping purposes.

Section 2. Camp location and upkeep.

Camps shall be located on suitable and well-drained grounds, roads, trails and walks for the use of the public, in connection with the camp, shall be so guarded or posted as to insure safety. The premises and equipment shall at all times be kept in a clean and safe condition and free from vermin. The camp site shall be kept free from noxious weeds such as poison ivy, ragweed and poison sumac.

Section 3. Water Supply.

(a) The water supply for drinking and culinary purposes shall be safe. No supply shall be used until it has been inspected and found to meet the standards of the state board of health. When water from a public supply is carried in, clean containers shall be used. (The use of a common drinking cup is prohibited by State law.)

(b) Drinking water (wells)—All wells whether dug, driven point or drilled and cased, shall be so located, constructed and topped, and the pump so attached as to prevent pollution of the well water.

(c) No surface spring water shall be used for drinking or preparing foods, unless amply protected against pollution, and not before it has been inspected, tested and pronounced safe by the state board of health.

(d) Newly constructed and reconstructed wells, whether drilled or iron pipe cased with driven point, and pumps, water pressure systems, and new piping, shall be sterilized and duly tested by an accredited laboratory before use.

(Tests for the purity of water supplies are made free of charge by the state board of health laboratory, Columbia, South Carolina. Sterile containers can be secured from the local county health officer.)

Section 4. Toilets.

All toilets shall conform to section 5050, Code, 1942 and rules and regulations of the state board of health.

Section 5. Washing facilities.

Hand and clothes washing facilities must be adequate and shall be kept in a sanitary condition at all times.

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Section 6. Garbage, rubbish, waste paper, etc.

(a) Garbage of the camp and tin cans shall be kept in separate covered containers and buried or otherwise disposed of without creating a nuisance. The camp shall be kept free from rubbish.

(b) Waste water from washing facilities, kitchen and other buildings or equipment shall be collected and disposed of so as not to form pools on the ground in or near the camp, nor create a nuisance, nor pollute any drinking water supply.

Section 7. Sleeping and living quarters.

(a) Camp owners maintaining or offering for the use of the public sleeping or living quarters shall meet the requirements prescribed by this section.

(b) Every such camp building or tent used for sleeping or living quarters shall have windows or openings so constructed as to admit sunlight. The ventilation shall be adequate to keep the air in all parts of the living and sleeping quarters clean.

(c) The living and sleeping quarters shall be kept clean and sanitary, and during the insect season all outside openings shall be effectively screened with 18-mesh screen wire.

(d) In buildings used for sleeping quarters there shall be at least 225 cubic feet of air space for every occupant.

(e) Buildings and permanent tents used for sleeping quarters shall be provided with floors raised above the ground. When bunks are used, they shall be raised at least twelve inches above the floor.

(f) The floors of all buildings used as living quarters shall be swept daily (dry sweeping is prohibited) and scrubbed with hot water and soap at least once a week.

(g) Tents provided for living purposes shall be waterproof and trenched for drainage. The interior shall be kept clean and dry. When used as sleeping quarters, they shall be equipped with cots or beds.

(h) Bunks, beds and bedding shall be kept clean and free from vermin.

(i) When provided, bedding shall be sufficient; blankets shall be hung out for airing at least once a week.

(j) Clean, fresh pillow slips and bed sheets of sufficient size to completely cover the mattress and pillow shall be used, and shall be renewed daily, or before being assigned to another guest.

Section 8. Camp supervision.

The owner, caretaker or other person in charge of the camp shall be responsible for maintaining in good order all sanitary equipment and for compliance shall make or have made (by a responsible person reporting to them) frequent inspection of the premises and sanitary equipment for the purpose of maintaining proper sanitation and compliance with these regulations.

Section 9. Regulations, posting of and camp maintenance.

(a) All tourist camps located in South Carolina shall be constructed, arranged, and maintained in a manner required in these regulations. These regulations shall be enforced by the local board of health, or county health department.

Section 10.

It shall be the duty of all house trailer camp owners or managers to report immediately to the local health officer all known or suspected cases of communicable diseases.

Section 11. Permits.

Before any trailer camps, trailer parks or trailer lots are operated, a permit shall be obtained from the county health officer.

Section 12.

Violation of these rules and regulations shall be punishable in accordance with section 5002-1 of the Civil Code of 1942 by a fine not exceeding \$100.00 or by imprisonment not exceeding thirty (30) days.

Communicable Diseases.

(Filed Secretary of State's office February 17, 1944.)

Section 1. Physicians shall report cases of certain diseases (and deaths) from them.

Every physician in the State of South Carolina shall report in writing or by an acknowledged telephone communication to the local health authority where such exists or where

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one does not exist, to the state health officer, immediately after his or her first professional visit, each patient, he or she shall have found suffering, or suspected to be suffering, with any contagious disease. IF SUCH DISEASE IS OF A PESTILENTIAL NATURE, HE SHALL ALSO IMMEDIATELY NOTIFY THE STATE HEALTH OFFICER AT COLUMBIA BY TELEGRAPH OR TELEPHONE AT STATE EXPENSE. He or she shall report, as required above, every death from such contagious or pestilential disease immediately after it shall have occurred. The attending physician is authorized and it is made his duty to place the patient, the household and the premises under the restrictions as hereinafter provided, for the management and control of said disease, until such time as the control of said disease may be assumed by the local or state board of health.

Section 2. Physicians shall report cases of occupational diseases.

Each physician having knowledge of any person whom he believes to be suffering from any occupational disease shall report the diagnosis of the disease to the state board of health. The term occupational disease has reference to one which occurs with definite frequency and regularity in occupations where there is a specific exposure as the cause which operates to produce effects in the human body recognized clinically by the medical profession as pathological changes and effects produced by the specific exposure involved. The state board of health is authorized to investigate and to make recommendations for the elimination or prevention of occupational diseases which shall be reported in accordance with the provisions of this section. The state board of health is also authorized to study and provide advice in regard to conditions that may be suspected of causing occupational diseases, provided information obtained upon investigations made in accordance with the provisions of this section shall not be admissible as evidence in any action of law to secure compensation for occupational diseases through common law.

Section 3. Householders, heads of families, etc., shall report contagious diseases.

Every hotel proprietor, keeper of a boarding house or inn, keeper or manager of tourist, trailer or other camp, and householder or head of a family, in a house wherein any case of a reportable or contagious disease may occur, shall report the same to the local health authority as early as possible after the time of his or her first knowledge or suspicion of the nature of the disease, unless previous notice has been given by the physician in attendance; and in case of quarantinable diseases, until instructions are received from the said local health authority, shall not permit any clothing or other articles which may have been exposed to infection to be removed from the house, nor shall any occupant of said house change his residence elsewhere without the consent of the local health authority.

Section 4. Nurses and midwives shall report redness or inflammation of eyelids to health authorities.

Whenever any nurse, midwife or other person not a legally qualified practitioner of medicine shall notice inflammation of the eyes or redness of the lids in a new-born child under his or her care, it shall be the duty of such person to report the same to the local health authority, or, in his absence, to any reputable physician, as early as possible after the same is first noticed.

Section 5. The notifiable diseases in South Carolina.

Anthrax, asbestosis, silicatosiis, silicosis, cataract (glass workers), compress air illness, dermatitis due to irritating oil, cutting compounds or lubricants, chemical dusts, paints, plastics, liquids, dyes, fumes, gases or vapors; lead poisoning, mercury poisoning, carbon-monoxide poisoning or oxides of zinc, manganese and other metals; carbon tetrachloride and phosgene poisoning, poisoning by carbon disulphide, methanol, or volatile halogenated hydrocarbons; poisonings by benzol, or nitro- and amino-derivatives of benzol (dinitrobenzol, anilin, and others); chlorine poisoning, poisoning by sulphuric, hydrochloric or hydrofluoric acid; poisoning by volatile petroleum products; poisoning by refrigerants, ethyl bromide, sulphur dioxide, hydrogen sulfide, nitrous gases, butyl alcohol, explosives, esters or aldehydes.

Section 6. Local health authorities shall keep records of contagious diseases.

City, town and county health authorities shall keep a careful and accurate record of all cases of notifiable diseases reported to them, with the name, date, age, sex, race, location, and such other necessary data as may be prescribed from time to time by the state board of health. They shall also make a report of all notifiable diseases to the state board of health at such time and on such form as may be required. Whenever such dis-

cases are of unusual incidence, they shall report these diseases immediately after their first knowledge of them to the State Board of Health by telephone or telegraph.

Section 7. Rules and regulations relating to quarantine, isolation and other control measures to be observed by all health authorities.

The report of a committee of the American Public Health Association on the control of communicable diseases, and approved by the U. S. public health service, and approved and promulgated from time to time by the executive committee of the South Carolina state board of health, is adopted as the rules and regulations for the control of communicable diseases in South Carolina.

These rules for the regulations of quarantine, isolation and disinfection in the several contagious diseases therein named are to be observed by all boards of health, health officers, physicians, school superintendents, school trustees and such others as shall be responsible for the care and regulation of the public health. All health authorities of counties, towns and cities in this State are hereby directed and authorized to establish local quarantine, hold in detention, maintain isolation and practice disinfection, as hereinafter provided for, of all such persons, vehicles or premises which are infected or suspected of being infected with any of the above contagious diseases wherever found. Following are some of the rules and regulations abstracted from the above report:

(a) **Cleaning**—This term signifies the removal by scrubbing and washing, as with hot water, soap and washing soda, of organic matter on which and in which bacteria may find favorable conditions for prolonging life and virulence; also the removal by the same means of bacteria adherent to surfaces.

(b) **Disinfecting**—By disinfecting is meant any process, such as the use of dry or moist heat, gaseous agents, poisoned food, trapping, etc., by which insects and animals known to be capable of conveying or transmitting infection may be destroyed.

(c) **Disinfection**—By this is meant the destroying of the vitality of pathogenic micro-organisms by chemical or physical means.

(d) **Fumigation**—By fumigation is meant a process by which the destruction of insects, as mosquitoes and body lice, and animals, as rats, is accomplished by the employment of gaseous agents.

(e) **Isolation**—By isolation is meant the separating of persons suffering from a communicable disease, or carriers of the infecting micro-organism from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent to susceptible persons.

(f) **Quarantine**—By quarantine is meant the limitation of freedom of movement of persons or animals who have been exposed to communicable disease for a period of time equal to the longest usual incubation period of the disease to which they have been exposed.

(g) **Renovation**—By renovation is meant, in addition to cleansing, such treatment of the walls, floors, and ceilings of rooms or houses as may be necessary to place the premises in a satisfactory sanitary condition.

Section 8. Rules and regulations relating to the placarding of houses and premises.

(a) Upon notice that the following diseases exist within his jurisdiction, it shall be the duty of the proper health authority to have the houses or premises in which the disease exists placarded by placing a yellow flag or card of such size and wording as may be prescribed by the state board of health, at the outside entrance, or entrances to the house or premises. Persons ill with any of the following diseases shall be isolated for the period of communicability of the diseases, contracts shall be quarantined for the period of maximum incubation for the disease, concurrent and terminal disinfection shall be practiced as prescribed.

Quarantine placard:

1. Cholera
2. Diphtheria
3. Measles (in non-epidemic years)
4. Plague
5. Poliomyelitis
6. Psittacosis
7. Scarlet fever
8. Smallpox
9. Typhus fever (epidemic)
10. Whooping cough (in sporadic cases)

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(b) Upon notice that the following diseases exist within his jurisdiction, it shall be the duty of the proper health authority to have the houses or premises in which the disease exists placarded by placing a card of such size and color and wording as may be prescribed by the state board of health, at the outside entrance or entrances to the house or premises. Persons suffering from the following diseases shall be isolated and concurrent and terminal disinfection shall be practiced as prescribed. Contacts do not have to be quarantined.

Warning placard:

1. Anthrax
2. Chicken pox
3. Dengue
4. Dysentery (bacillary)
5. Encephalitis lethargica
6. Favus
7. German measles
8. Glanders
9. Gonorrhea
10. Influenza
11. Leprosy
12. Measles (in epidemic years)
13. Meningitis
14. Mumps
15. Paratyphoid fever
16. Pneumonia
17. Septic sore throat
18. Syphilis
19. Trachoma
20. Tuberculosis
21. Typhoid fever
22. Whooping cough (in epidemic years)
23. Yellow fever

(c) Upon notice that the following diseases exist within his jurisdiction, it shall be the duty of the proper health authority to make an investigation and institute such control measures as may be necessary. It is not necessary that the house or premises be placarded, the patient isolated, nor contacts quarantined:

Whenever the disease is of contagious or infectious nature such concurrent and terminal disinfection shall be practiced as may be necessary to prevent further spread of the disease.

No placard:

1. Hookworm
2. Actinomycosis
3. Dysentery (amoebic)
4. Rabies
5. Rocky Mountain spotted fever
6. Tetanus
7. Trichinosis
8. Tularaemia
9. Malaria
10. Undulant fever
11. Typhus fever (endemic)
12. Cancer

Section 9. Placards shall not be destroyed or removed.

No person or persons shall alter, deface, remove, destroy, or tear down any card posted by any health authority. The occupant or person having possession or control of buildings or premises upon which a quarantine or other health notice has been placed shall, within twenty-four hours after destruction or removal of such by other than the proper authorities, notify the local health authority of such destruction or removal.

Section 10. Health authorities are to assume control of quarantine, isolation, and other control measures.

In all incorporated cities and towns the municipal health authorities shall assume control and management of contagious diseases and exposures and shall see that quarantine,

isolation and other control measures as herein provided are carried out. In those portions of all counties in this State outside of incorporated cities and towns, the county or district health department shall assume management and control of contagious diseases and exposures and shall see that quarantine, isolation and other control measures as herein provided are carried out.

Section 11. Health authorities may pass through quarantine lines.

All health authorities shall have the privilege and shall be allowed to pass through all quarantine lines, whether instituted at the instance of the State or local authorities, they first requesting permission and acquainting the officers or guards with the fact of their being properly authorized health officers, and with the assurance on their part that they understand the nature of the disease that they are visiting, and will take proper precautions as provided herein against carrying the infection themselves.

Section 12. Persons forbidden going to or leaving contagious disease premises.

After the house or premises containing a contagious disease is flagged or placarded, all persons except the attending physician or the authorized health officer are forbidden going in or leaving the premises, except as hereinafter provided for, and the carrying off or causing to be carried off, of any object or material whereby such disease may be conveyed, is prohibited.

Section 13. Persons affected with or exposed to contagious diseases shall obey health authorities.

It shall be the duty of all persons affected with any contagious or infectious disease or who from exposure to contagion from such disease, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as are given them by any health authority of the State in order to prevent the spread of such disease and it shall be lawful for such authorities to command any persons thus affected or exposed to infection to remain within designated premises for such length of time as herein provided, for the several contagious and infectious diseases.

Section 14. Travel of persons with contagious diseases.

All persons having any of the following contagious diseases are prohibited from riding upon any public vehicle or conveyance except upon the written approval of and/or according to regulations prescribed by the state health officer. They are also prohibited from being upon public thoroughfares of the State except in private conveyance, which shall make no unnecessary stops between the point of departure and the destination of the patient. They are prohibited from attending any public assemblages or public places:

Acute poliomyelitis	Chickenpox
Asiatic cholera	Dengue
Diphtheria	Smallpox
Influenza	Rabies
Measles	Trachoma
Meningococci meningitis	Typhoid fever
Mumps	Paratyphoid fever
Plague	Pulmonary tuberculosis (active)
Pneumonia	Typhus fever (epidemic)
Scarlet fever	Yellow fever
Septic sore throat	Whooping cough

Section 15. Children with contagious diseases shall not attend school.

No superintendent, principal, or teacher of any school; and no parent, master or guardian of any child or minor having the power and authority to permit any such child or minor having any contagious or infectious disease requiring isolation or any other disease in a communicable stage but not requiring isolation to attend any private, parochial, church or Sunday school until the requirements of these rules and regulations as to the disease or diseases in question have been complied with after their recovery. They shall not be permitted to enter school except upon the written certificate of the attending physician or of the local health officer stating that the child has recovered and is non-infectious.

Section 16. Superintendents of schools to be notified of contagious disease.

The local health authority shall notify the superintendent or principal of any school of the locations of quarantinable diseases, and if the superintendent or principal finds any

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attendance in school from such places except as strictly provided for herein, he shall deny them admission to the said schools, and admit them only upon the written certificate of the attending physician or local health authority that there is no danger of infection from them.

Section 17. Household contacts of contagious disease in relation to school attendance.

Children coming from a house in which contagious disease exist, but not suffering from said contagious disease, may attend school upon the written certificate of the attending physician, or local health authority, stating that the child has not been exposed to the disease for maximum incubation of the disease, and that the patient is in isolation; or that they are immune to the disease and are not carriers of said disease.

Section 18. Persons with trachoma or acute infectious conjunctivitis excluded from school.

Persons afflicted with trachoma, granulated lids or acute infectious conjunctivitis shall be excluded from schools, public assemblages and from close association with other individuals, unless they are under the constant care and strict supervision of a competent physician, and hold a certificate from said physician stating that active inflammation has subsided and that danger of infection no longer exists.

Section 19. Minor diseases to be excluded from school.

Those actually suffering from acute tonsillitis, scabies, lice, ringworm and impetigo contagiosa shall be excluded from school during such illness and be readmitted only on the certificate of the attending physician or local health authority, attesting to their recovery and non-infectiousness.

Section 20. Health authorities to investigate reported cases.

Whenever the local health authority is informed or has reason to suspect that there is a case of contagious reportable disease within his territory, he shall immediately examine into the facts of the case and shall adopt the control regulations applicable to such diseases as provided herein.

Section 21. Premises occupied by persons with contagious diseases to be rendered non-infectious.

No person shall offer for hire or cause or permit anyone to occupy premises, houses or apartments previously occupied by a person ill with any contagious or infectious communicable disease, or any other disease of communicable nature until such premises, houses or apartments shall have been rendered non-infectious according to the rules herein provided under the supervision of the local health authority.

Section 22. Premises not rendered non-infectious shall be placarded.

Whenever these rules and regulations, or whenever the order of the local health authority requiring the disinfection or fumigation of apartments, premises, or articles shall not be complied with, or in case of delay, the local health authority shall forthwith cause to be placed upon the outside entrance or entrances a placard as follows:

"These apartments have been occupied by a patient or patients suffering with a contagious disease and they may have become infected. They must not be again occupied until my orders directing the renovation and disinfection of the same have been complied with. This notice must not be removed under penalty of law, except by an authorized official."

Section 23. Persons suffering from reportable diseases shall not work where food products are produced.

No person suffering with any reportable disease or who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, dysentery, or typhoid fever shall work, or be permitted in or about any dairy or any establishment for the manufacture of food products until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employ or presence in such establishment.

Section 24. These rules and regulations not to prevent local laws.

Nothing contained in these rules and regulations shall be construed to prevent any city, town or county from making such health laws as they may think necessary for the preservation of public health; provided that the said laws be not inconsistent with the laws

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as herein laid down by the state board of health. And it shall be the duty of the local health authority to at once furnish the state board of health with a copy of the proposed law or laws for the approval of the executive committee of the state board of health before they shall become law.

Industrial Plants

(Filed Secretary of State's office February 17, 1944.)

Section 1. Water supplies.

Water provided in industrial plants for drinking purposes, and water used for the humidifying of spaces or rooms where workmen are employed, shall be of a purity acceptable to the State Board of Health.

Section 2. Common cups.

All textile and industrial plants, mercantile establishments and other places where more than five people are employed are required to furnish their employees sanitary drinking fountains, or individual sanitary drinking cups, and to keep receptacles in which drinking water is kept properly covered so as to exclude dust, etc.

Section 3. Drinking fountains.

If drinking fountains are furnished and are the bubbling type, they shall be so made that the drinking is from a free jet projected at an angle to the vertical, and not from a jet that is projected vertically or that flows through a filled cup or bowl.

Section 4. Toilet facilities—factories to be provided with suitable water closets.

Every factory, mercantile, or other establishment, or office where two or more males and two or more females are employed together, shall be provided with a sufficient number of separate water closets, earth closets or privies, for the use of each sex, and plainly so designated; and no person shall be allowed to use a closet or privy which is provided for persons of other sex. Such water closets, earth closets, or privies, shall be kept clean and free from disagreeable odors.

Minimum Toilet Fixtures to be Provided for each Sex.

Employees	Fixtures
1-9	1
10-24	2
25-49	3
50-100	5
over 100	1 for each additional thirty persons

A. The number to be provided for each sex should be based on the maximum number of persons of that sex employed at any one time on the premises for which the fixtures are furnished.

B. Whenever urinals are provided for men, a maximum of one-third of the number of toilet fixtures specified in the above table may be replaced by an equal number of urinals. Two feet of porcelain enamel urinal may be considered as equivalent to one urinal fixture.

C. Multiple seat toilets or makeshift trough arrangements used for toilets shall not be considered satisfactory even though they are equipped for water flushing.

D. Every water closet bowl shall be set entirely free from the wall and enclosure so that the space around the fixture may be cleaned easily.

E. Every water closet shall have a hinged-lid seat made of impervious material. If absorbent material is used the seat shall be finished with varnish or other coating to make it impervious to water.

F. All outside doors, windows, and other openings of toilet rooms shall, during the fly season, be equipped with screens of at least 16 mesh.

Whoever violates the provisions of (section 3241, 1942) in reference to water-closets in factories, shall be punished by a fine of not less than ten (\$10) dollars nor more than thirty (\$30) dollars.

Section 5. Spitting.

Spitting on the floors and on the walls of any industrial plant is unlawful and prohibited.

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Section 6. Threshold limits.

The following are declared threshold limits for the designated toxic materials.

No person, firm, corporation or other employer shall use or permit to be used in the conduct of his business, manufacturing establishment or other place of employment, any process, material or condition known to have an adverse effect on health, unless arrangements have been made to maintain the occupational environment in such a manner that injury to health shall not result.

Exposure to dust, fumes, mists, vapors, gases or any material that may affect health shall be kept below the following threshold limits.

Substance	Maximum allowable concentration
Ammonia	100 p. p. m.
Amyl acetate	200 p. p. m.
Aniline	5 p. p. m.
Arsine	1 p. p. m.
Benzene (benzol)	100 p. p. m.
Butyl acetate	200 p. p. m.
Butyl alcohol	100 p. p. m.
Carbon disulfide	20 p. p. m.
Carbon monoxide	100 p. p. m.
Carbon tetrachloride	75 p. p. m.
Dichlorobenzene	75 p. p. m.
Dimethylaniline	similar to aniline
Ethylene dichloride	100 p. p. m.
Hydrogen chloride	10 p. p. m.
Hydrogen cyanide	20 p. p. m.
Hydrogen fluoride	3 p. p. m.
Hydrogen sulfide	20 p. p. m.
Methyl alcohol	200 p. p. m.
Monochlorobenzene	75 p. p. m.
Mononitrotoluene	similar to nitrobenzene
Nitrobenzene	5 p. p. m.
Nitrogen oxides	20 p. p. m.
Petroleum naphthas	1000 p. p. m.
Phosgene	1 p. p. m.
Phosphine	1 p. p. m.
Sulphur dioxide	10 p. p. m.
Tetrachloroethane	10 p. p. m.
Tetrachloroethylene	200 p. p. m.
Toulene (Toluol)	200 p. p. m.
Trichlorethylene	200 p. p. m.
Turpentine	200 p. p. m.
Xylene (Xylol)	200 p. p. m.
Cadmium	0.1 mg./m. ³
Chromic acid	0.1 mg./m. ³
Lead	0.15 mg./m. ³
Mercury	0.1 mg./m. ³
Dinitrotoluene	similar to TNT
Tetryl	1.5 mg./m. ³
TNT	1.5 mg./m. ³
Zinc oxides	15.0 mg./m. ³
Silica (SiO ₂) (free or uncombined)	5 m.p.p.c.f.
Silicates	50 m.p.p.c.f.

Note: p. p. m.—Parts of substance per million parts of air by volume.

mg./m.³—Milligrams of substance per cubic meter of air.

m. p. p. c. f.—Millions of particles of substance per cubic foot of air.

The maximum allowable concentration for the various substances listed is based on an eight-hour daily exposure. Other materials not included in the above list shall be kept below injurious concentrations, which will be stipulated depending on the nature of the material or the materials.

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Section 7. Carroting.

Definitions: For the purpose of carrying out the provisions of this resolution the following terms are defined:

Hatters' Fur is any animal fiber or other substance used in the manufacture of hats, which is treated or otherwise prepared by the process of, or, in a manner similar to that of carroting.

Carroting is the process of treating hatters' fur with mercury nitrate or any other solution or material for the purpose of rendering the hatters' fur suitable in the manufacture of hats.

Mercurial carrot in any solution or material containing mercury or its compounds in combination with nitric acid or other materials and used in the carroting or preparation of hatters' fur.

The use of mercurial carrot in the preparation of hatters' fur, or the use of mercurial carotted hatters' fur in the manufacture of hats, is prohibited.

Faris, Camp Meetings and Other Gatherings

(Filed Secretary of State's office February 17, 1944.)

Section 1. Adequate and sufficient toilet facilities shall be provided, and maintained in a sanitary condition, at all fair grounds, camp meeting grounds, and similar public gathering places, and shall meet the requirements of rules and regulations governing such facilities.

Section 2. In no case where water supply is available will any other than flush toilets be allowed. Where necessary to construct other forms of toilets such forms shall receive the written approval of the State Board of Health or its agencies.

Section 3. Water furnished for drinking purposes shall be of the standard required for drinking water supplies through the State.

Section 4. Food stuff offered for sale within the limits of the fair grounds or encampment shall be properly protected from possible contamination by dust and flies, and shall meet the requirements of rules and regulations for food and food handling.

Flour Mills and Bakers Bags

(Filed Secretary of State's office September 17, 1948)

Section I.—It shall be illegal and unlawful for any individual, firm or corporation to sell or offer for sale any flour, corn meal or other grain cereal products, for human consumption which has been packed in bags or containers which have previously been used for any purpose.

Section II.—It shall be illegal and unlawful for any flour, corn or other cereal mill in the State of South Carolina to use any except new bags or other new containers for the packing of flour, corn meal or other grain cereal for human consumption.

Section III.—It shall be illegal and unlawful for any flour, corn meal or other grain cereal product to be shipped into the State of South Carolina unless such products are packed in new bags or other new containers which have not been previously used.

Section IV.—It shall be illegal and unlawful for any bakery to use flour, corn meal or other grain cereal product which has been packed in used bags or any other containers which have been previously used.

PENALTY. Any individual, firm or corporation who shall violate, disobey, refuse, omit or neglect to comply with this rule of the State Board of Health of South Carolina, made by it in pursuance of Section 5002, of the Code of Laws of South Carolina, 1942, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding the sum of one hundred dollars, or be imprisoned for thirty days: provided, this section shall not apply to any persons until the rules of the South Carolina State Board of Health are promulgated.

These regulations shall become effective six months after date of promulgation.

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Food Processing Plants

(Filed Secretary of State's office April 20, 1951.)

Section 1. Definitions:

A. Food Processing Plant.—The term "food processing plant" as used in these regulations shall mean any establishment engaged in preparing, manufacturing, processing, canning, bottling, packing or re-packing any food offered or intended to be offered for sale for human consumption, whether or not hermetically sealed, except "Slaughter Houses", "Poultry Processing Plants", "Meat Markets", "Restaurants", "Oyster Shucking Houses", and "Milk and Milk Products", which are covered by separate regulations. These regulations shall apply to shellfish processing plants which utilize steam or any heat or cooking process in the preparation of shellfish for market, and specifically replace and supplant previous regulations governing "Canneries" and "Cooked Crabmeat, Lobster and Shrimp".

B. Food Processing Room.—The term "food processing room" means any place where food or food products or ingredients intended for human consumption are manufactured, prepared, processed, packed, mixed, handled or re-packed, and any room used for washing and storing of utensils, equipment or apparatus that come in contact with food, food products or ingredients.

C. Health Officer.—The term "health officer", within the meaning of these regulations, shall mean the State Health Officer and/or the county or other local health officer or their authorized representative.

D. Person.—The term "person" shall mean individual, firm, corporation, association, or any business entity by whatever name designated and whether or not incorporated.

Section 2. Permits:

It shall be unlawful for any person to operate a food processing plant in the State of South Carolina who does not possess an unrevoked permit from the State Board of Health. Such a permit shall be posted in a conspicuous place. Only persons who comply with the requirements of these regulations shall be entitled to receive and retain such a permit. Such a permit may be temporarily suspended by the health officer upon the violation by the holder of any of the terms of these regulations, or revoked after an opportunity for a hearing by the State Health Officer upon repeated violation.

Section 3. Floors:

The floors in food processing rooms shall be of smooth concrete, tile, or other waterproof material, and where necessary, shall have sufficient slope for adequate drainage to one or more properly trapped or otherwise protected outlets. They shall be kept clean and in good repair and shall be frequently flushed at places where overflow is common.

Public health reason.—Properly constructed floors of concrete or other waterproof material can be kept clean more easily than pervious or easily disintegrating material, will not absorb organic matter, and are more apt to be kept clean and free of odors. Trapping of drains prevents sewer gas, vermin or insects from entering the plant. Clean floors in good repair are conducive to clean food-handling methods.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. The floors of food processing rooms are constructed of concrete, tile, or other waterproof material with an easily cleaned surface, and are in good repair.
2. Floors are smooth and properly sloped where necessary to prevent pools of water on floor.
3. All drains are of adequate size to minimize clogging, are easily accessible, and trapped or otherwise adequately protected where necessary to prevent obnoxious odors, insects or vermin from entering the plant.
4. The floors of all rooms are kept clean.

Section 4. Walls and ceilings:

The walls and ceilings in the food processing rooms shall be constructed of sound materials with easily cleaned surfaces, finished in a light color, maintained clean and in good repair. The walls and ceilings of storage and receiving rooms shall be maintained clean and in good repair.

Public Health Reason.—Smooth, hard surface walls and ceilings painted or otherwise properly finished are more easily kept clean. A light-colored paint or finish aids in the

even distribution of light and the detection of unclean conditions. Clean walls and ceilings are conducive to better sanitary conditions.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. The walls and ceilings of all food processing rooms are constructed of wood, tile, smooth surface concrete, cement plaster, brick, or other suitable materials, all with easily cleaned surfaces. If walls are of wood construction and subjected to frequent washing, then a cement or other waterproof wainscoting shall be provided when necessary to facilitate easy cleaning and minimize the danger of rotting.
2. The walls and ceilings of all food processing rooms are painted or finished in a light color and refinished as often as is necessary in such manner as will permit easy cleaning, and aid in even distribution of light.
3. The walls and ceilings of all rooms are kept clean. Walls and ceilings shall be kept free of cobwebs, dust, dirt and all filth.
4. The walls and ceilings of all rooms are in good repair.

Section 5. Screening:

All openings to the outer air in the food processing rooms shall be effectively screened or otherwise protected where necessary against entrance of flies or other insects.

Public Health Reason.—Flies and other insects may transmit infection. They may serve as vehicles for contamination, and thus nullify the many benefits to be derived from a clean, sanitary plant.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

All openings to the outer air in the food processing rooms are effectively screened with not less than 16-mesh screen and all doors are self-closing and screen doors to the outer air open outward, or fans of sufficient power to prevent the entrance of flies are in use or flies are absent.

Section 6. Lighting and ventilation:

All rooms shall be adequately lighted and ventilated.

Public Health Reason.—Ample light promotes cleanliness. Adequate ventilation reduces bacterial concentration in the air, odors, and prevents condensation of moisture on walls and ceilings which may drop into food or on utensils.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. In food processing rooms artificial light sources are provided equivalent to one 100-watt electric light bulb per 100 square feet of floor area, reasonably evenly distributed and in use except when adequate natural light is present.
2. All skylight and natural light openings are clean and in good repair.
3. All rooms are adequately ventilated so as to be reasonably free of disagreeable odors and condensation.

Section 7. Toilet facilities:

Adequate and conveniently located toilet facilities shall be provided for employees, conforming with the rules and regulations of the State Board of Health. The doors of all toilet rooms shall be self-closing; toilet rooms shall be kept clean, in good repair, and well-lighted and ventilated. If privies are permitted, they shall be separated from the food processing plant and shall be constructed and maintained in conformity with the standards of the State Board of Health. Handwashing signs shall be posted in each toilet room used by employees.

Public Health Reason.—Human excreta is potentially dangerous and must be properly disposed of. The organisms causing intestinal diseases may be present in the body discharges of cases or carriers. Sanitary toilet facilities are needed to protect the food and utensils from fecal material carried by flies, other insects, hands, or clothing.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. Conveniently located toilet facilities are provided in accordance with Industrial Plant Regulations and complying with the standard plumbing practices of the State.
2. The toilet room and fixtures are kept clean, sanitary, in good repair and free from flies.
3. Handwashing signs are conspicuously posted in each toilet room.
4. The toilet room is well lighted and ventilated to the outside air.
5. Privies are constructed and maintained in accordance with the requirements of the State Board of Health.

Section 8. Water supply:

Water under pressure shall be easily accessible to all parts of the food processing rooms. The supply shall be adequate, and of a safe, sanitary quality, and shall meet all require-

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ments of the State Board of Health as to drinking water. If an industrial water supply is used for any purpose at the plant, there shall be no connection between that supply and the potable supply used for food manufacturing. The non-potable water shall not be piped into the food processing rooms.

Public Health Reason.—The water supply should be accessible so as to encourage its use in cleaning operations; it should be adequate so that cleaning and rinsing will be thorough; and it should be of safe, sanitary quality in order to be suitable for drinking and to avoid contamination of food and equipment used in manufacturing processes.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. Water under pressure is easily accessible to all food processing rooms.
2. The water supply is ample in quantity to insure proper cleaning of floors, utensils, and equipment.
3. The water supply is approved by the State Board of Health.
4. There is no cross-connection between an unsafe supply and a safe supply; the unsafe supply is not piped into any food processing room, and plumbing and equipment is installed in such a manner that back-flow will not occur to contaminate the water supply.
5. Water storage tanks are of corrosion-resistant material, properly covered, clean, and the inlet and outlet so arranged as to prevent contamination during filling and emptying.

Section 9. Lavatory facilities:

Adequate and convenient handwashing facilities shall be provided, including water under pressure, soap, and approved sanitary towels. The use of the common towel is prohibited. All employees shall wash their hands before handling any food ingredients or equipment used in the manufacturing process, and after each visit to the toilet.

Public Health Reason.—The use of handwashing facilities and sanitary towels are essential to the cleanliness of employees who are engaged in food processing plants.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. Handwashing facilities, including water under pressure, soap and individual cloth or paper towels are provided.
2. Handwashing facilities are adequate and convenient to toilet rooms.
3. Sinks or washing vats in which utensils or equipment are washed are not used for handwashing, bathing or washing clothing.
4. All employees wash their hands before handling any food or equipment and after each visit to the toilet or after having left the plant for any reason.
5. Hot water under pressure is provided for handwashing facilities at all food processing plants except in those plants where all food or food products are packaged in hermetically sealed containers and subjected to a sufficiently high temperature to effectively destroy any harmful organisms which might be present in the sealed containers.

Section 10. Construction of equipment and utensils:

All operating equipment, utensils, apparatus and accessories employed in the preparation of food shall be of sanitary construction, resistant to the corrosive action of food or food products being processed, in good repair and easily accessible for cleaning. The use of any utensil or equipment badly worn, rusted, corroded or in such condition that it cannot be easily cleaned, is prohibited. Containers used for the mixing, holding or curing of food or food products shall be so located as to prevent any contamination of contents thereof and shall be provided with suitable covers when necessary to prevent the entrance of dust, insects or other contamination.

Public Health Reason.—If the equipment is not so constructed that it can be easily cleaned and is not kept in good repair, it is unlikely that it will be properly cleaned.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. All equipment, utensils, and apparatus used in mixing, conveying, holding or curing of food or food products is constructed of easily cleaned material, resistant to the corrosive action of the food or food products being processed.
2. All apparatus, utensils, and equipment which food or food products contact are so constructed that all parts may be easily cleaned and disinfected.
3. All mixing, holding, or curing containers are provided with suitable covers when necessary to protect them against contamination by dust, dirt, insects and vermin.
4. All equipment and utensils with which food or food products come in contact are in good repair, free of breaks, corrosion, open seams, cracks or chipped places.

5. All piping, fittings and valves used to conduct syrup, brine or other liquids in food processing plants are of such diameter and so designed as to permit easy cleaning.

Section 11. Cleaning and bactericidal treatment of equipment:

All apparatus, utensils, pipe lines, equipment, and containers employed in the food manufacturing or processing shall be thoroughly cleaned and when the packaged food or food products are not to be subjected to a sufficient heat process to destroy any harmful bacteria which might accidentally get in or on the equipment, utensils, apparatus, pipe lines, or containers, then they shall be subjected to an approved bactericidal process before each use. They shall be maintained at all times in a clean and sanitary condition. Steam, hot water, chlorine, or other equally effective agents which are approved by the health officer, are permissible for disinfection.

Public Health Reason.—Food or food products cannot be kept clean and safe if permitted to come in contact with equipment or containers which have not been properly cleaned and disinfected.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. All equipment, utensils, pipe lines and containers are kept clean and free from dust, dirt, insects, and other contamination, and thoroughly washed and rinsed at the close of each day's operation and oftener if necessary to prevent insanitary conditions.
2. Where necessary, all equipment, utensils, pipe lines and containers are disinfected by an approved bactericidal treatment before use.
 - (a) If steam is employed, the cleaned surfaces to be disinfected shall be in actual contact with live steam for a period of not less than three minutes. In treating jars, vats and similar containers by this method, the steam should be liberated on the bottom and shut off not less than three minutes after steam has been issuing from the top of the covered container. In treating pipe lines and fillers, the steam should issue from the outlets of the pipes or fillers at a temperature of 200° F. for at least five minutes to effect adequate disinfection. The period of exposure required for pipe lines is longer than that required for individual containers due to loss of heat through the large surface exposed to the air.
 - (b) If hot water is used, the cleaned surfaces to be disinfected shall be in contact with water at a temperature of not less than 170° F. for a period of not less than 2 minutes. In treating pipe lines and fillers, the water issuing from the outlets must be at the desired temperature (170° F.) for the designated time 2 minutes).
 - (c) If chlorine is used, the cleaned surfaces to be disinfected shall be in contact with a solution containing not less than 100 p.p.m. of available chlorine for not less than 30 seconds.
 - (d) If other bactericides are used, the recommendations of the Health Officer are followed.
3. When a food or food product is packaged in hermetically sealed containers and within a reasonable length of time is subjected to a sufficient heat process which will destroy any harmful organisms that might be present is considered adequate disinfection.
4. When syrup or brine is used, all vats, jars, lines and fillers are washed after emptying, subjected to an approved bactericidal process, and flushed with potable water before beginning operations.
5. All containers for food or food products are carefully inspected immediately before being used, and improperly cleaned or otherwise defective containers rejected.

Section 12. Storage of utensils, containers, equipment and ingredients:

All utensils, containers, equipment, and ingredients shall be stored in a clean, dry place, protected from flies, dust or other contamination. Detergents, insecticides, and similar products shall be stored so as to prevent contamination of food or food products.

Public Health Reason.—If containers, ingredients, utensils and equipment are not protected from contamination, the value of the cleaning and disinfection treatment may be nullified. Food ingredients that are not properly protected may become contaminated from dirt, dust, insects or vermin. Detergents, insecticides, or similar materials may create serious public health hazards if improperly stored or handled.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. All containers, utensils, equipment, and ingredients are stored above the floor in a clean, dry place, protected from insects, splash, dust, vermin, and other contamination, and utensils and containers inverted when practical.
2. Detergents, insecticides, and similar products are stored in a room or cabinet separate from equipment or food ingredients.

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Section 13. Location of equipment, utensils, and plant operations:

The various food processing operations shall be located and rooms partitioned where necessary so as to prevent any contamination of the food, food products, ingredients or of the cleaned equipment, utensils, containers or apparatus.

Public Health Reason.—If the washing and bactericidal treatment of utensils and containers, or the washing and sorting of unclean food are conducted in the same room in proximity to the mixing, filling, curing, holding or preparation of food or food products or clean utensils or equipment, there is opportunity for the food, food products or cleaned utensils, equipment or containers to become contaminated.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

The various food processing plant operations are conducted in separate rooms or are located, arranged, and conducted so as to prevent any contamination of the food, food products, ingredients or the cleaned equipment, utensils, containers or apparatus.

Section 14. Refrigeration:

Adequate refrigeration facilities shall be provided for all readily perishable food, food products or ingredients when necessary to prevent unwholesomeness or spoilage. All refrigeration facilities must be kept at the proper temperature for the foods, food products or ingredients being stored. Such facilities shall not be overloaded beyond the refrigeration capacity and shall be kept clean.

Public Health Reason.—Readily perishable food, food products or ingredients produced under normal conditions may contain microorganisms that will cause spoilage or unwholesomeness. Unless these readily perishable foods, food products or ingredients are to be processed within a short period of time, they must be adequately refrigerated to prevent growth and multiplication of any harmful microorganisms that might be present which would cause deterioration.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. Adequate refrigeration facilities are provided for all readily perishable food, food products or ingredients when necessary.
2. The refrigeration facilities are kept at the proper temperature for the food, food products or ingredients being stored.
3. The refrigeration facilities are not overloaded beyond the refrigeration capacity.
4. The refrigeration facilities are kept clean.

Section 15. Storage of finished products:

The finished products shall be stored in such manner as not to interfere with the sanitation of food processing rooms, and shall be stored above floor level when allowed to remain in food processing rooms longer than 24 hours.

Public Health Reason.—Cluttering the food processing rooms with filled cases tends to cause laxness and improper cleaning of floors and walls.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

The finished products are stored in a special storage room separate from the food processing rooms or in such other manner as not to interfere with the sanitation of the food processing rooms and is approved by the health officer.

Section 16. Disposal of waste:

All liquid wastes shall be disposed of through a public sewer or disposal system approved by the State Board of Health. By-products, such as trimmings from fruits and vegetables must be separated from waste or wash water and conveyed to silo or stack or removed from premises as frequently as necessary to prevent a nuisance or unsightliness. Suitable receptacles shall be provided for waste materials and such waste materials shall be removed daily. Containers used for waste materials shall not be used interchangeably with raw products, ingredients or partly processed products. Extraneous material or general litter shall not be allowed to accumulate in the processing rooms or part of any building used for processing or for the storage of raw products or ingredients.

Public Health Reason.—Garbage, trimmings from fruits and vegetables and other refuse attract insects and vermin and give rise to objectionable odors. The presence of such materials in excessive quantities in a food processing plant constitutes a serious sanitary hazard. The proper disposal of liquid waste prevents the creation of a nuisance or a possible public health menace.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

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1. All garbage and other refuse is kept in waterproof, non-absorbent, and easily washable receptacles. Close fitting lids shall be used when and wherever necessary to control the escape of odors from or ingress of flies to the contents of the receptacle.
2. All garbage, trash and other refuse material are removed from the premises as frequently as is necessary to prevent nuisance and unsightliness and disposed of in a manner approved by the health officer.
3. The receptacles for garbage and refuse are maintained in a sanitary condition.
4. All plumbing is so designed and installed as to prevent contamination of water supply through inter-connection or back-siphonage from fixtures.
5. By-products, such as trimmings from fruits and vegetables, are separated from waste or wash water and conveyed to silo or stack or removed from premises as frequently as is necessary to prevent a nuisance or unsightliness.

Section 17. Cleanliness of employees:

All persons engaged in the preparation of foods, mixing of syrups or brines, filling of containers, or in any other capacity which brings them in contact with the ingredients or containers of food or food products shall be free from communicable disease, shall wear clean clothes and shall keep their hands clean at all times while engaged in the manufacture of food or food products. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Employees shall not expectorate or use tobacco in any form in food processing rooms.

Public Health Reason.—Clean clothing and clean hands reduce the likelihood of contaminating the food or food products or equipment during handling. Healthy employees are essential to the sanitary operation of a food processing plant.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. Employees handling food or food products wear clean working clothes, which can be readily washed, and washable caps or nets covering hair.
2. A suitable clean locker space is provided for employees to store street clothing and personal effects. These must not be left exposed in the food processing rooms.
3. No employee uses tobacco or expectorates in the food processing rooms.
4. The hands of those handling food products or containers are kept clean.
5. All persons employed in the food processing plant are free from communicable disease.

Section 18. Miscellaneous:

The building, or portion thereof employed for food processing shall be used for no other purpose and shall be so located as to be protected from insanitary surroundings. The premises of all food processing plants shall be kept clean and free of litter or rubbish. Adequate insect and rodent control measures shall be effected. Animals shall be excluded from the food processing plant.

Public Health Reason.—Food processing plants in insanitary environments are difficult to keep clean; therefore, the products are more likely to be contaminated. If dirty containers, cases, and equipment are in proximity to unprotected raw materials and cleaned containers, the chances of the finished product becoming contaminated are greatly increased. Clean surroundings are conducive to clean methods and to better health conditions.

Satisfactory Compliance.—This item shall be deemed to have been satisfied if:

1. No portion of the food processing plant is used as a stable or barn or for any purpose other than the manufacture of food products, except as approved by the Health Officer.
2. No portion of the food processing plant is used for domestic purposes unless separated by suitable partitions.
3. The premises of the plant are free of rubbish, garbage, or similar organic material.
4. Empty containers and cases are stored so as not to interfere with the sanitation of the food processing rooms.
5. There is no evidence of breeding of flies, rodents, or other vermin on the premises.
6. Animals are excluded from the food processing plant.

Section 19. Reinstatement of permit:

Any food processor whose permit has been suspended may at any time make application for the reinstatement of the permit. After receipt of an application, accompanied by a statement signed by the applicant to the effect that the violation of these regulations has been corrected, the health officer shall make a reinspection and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant

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is again complying with the requirements, and, in case the findings indicate compliance, shall reinstate the permit. In case of failure to reinstate the permit, applicant may appeal the decision in writing to the State Health Officer.

Section 20. Examination and condemnation of unwholesome or adulterated ingredients, food or food products:

Samples of ingredients, food, or food products may be taken and examined by the health officer when necessary for the detection of suspected unwholesomeness or adulteration. The health officer may condemn and forbid the sale of, or cause to be removed and destroyed, any ingredients, food or food products which are unwholesome or adulterated.

Section 21. Enforcement interpretation:

These regulations are issued under the authority of Section 32-8, Code of Laws of 1952, and subsequent legislation. They shall be enforced by the health officer in accordance with interpretations and public health reasons approved by the State Board of Health.

Section 22. Penalties:

Violation of these rules and regulations shall be punishable in accordance with Section 32-17, Code of Laws of South Carolina, 1952, by fine not exceeding \$100.00, or imprisonment not exceeding 30 days; and each day of continued violation shall be a separate offense.

Hospitals, Licensing of

GENERAL HOSPITALS, SPECIALIZED HOSPITALS AND OTHER INSTITUTIONS.

Pursuant to § 32-792, S. C. Code of 1952.

(Filed Secretary of State's office July 10, 1952.)

The Executive Committee of the State Board of Health on May 16, 1950, adopted and promulgated under authority of § 32-792 the following Rules and Regulations governing the licensing and inspection and regulations of hospitals, and related institutions as defined.

INTRODUCTORY TO STANDARDS.

Part One of these Regulations applies to all hospitals and homes covered by the Act of the General Assembly of the State of South Carolina requiring the licensing, inspection, and regulation of hospitals and related institutions.

Part Two of these Regulations applies to the hospitals rendering the type or types of services covered therein.

Part Three of these Regulations contains additional regulations covering institutions rendering specialized care.

New construction applies to construction made after July 1, 1950.

PART ONE: GENERAL STANDARDS FOR ALL HOSPITALS AND SERVICES.

I. PHYSICAL PLANT AND EQUIPMENT

A. Construction

Every institution must be so planned, organized, equipped, manned and administered as to furnish adequate care to each class of persons which it receives for care and treatment.

The physical plant must be adapted to the public service to be performed.

All hospitals shall comply with all local and state laws, standards, codes, or ordinances applicable or pertinent to the construction and/or operation of a hospital that are not inconsistent with the provisions of §§ 32-761 to 32-795 S. C. Code 1952.

Before beginning construction plans must be approved by the South Carolina State Board of Health.

The State Board of Health reserves the right to *make exceptions* to these standards as applied to existing institutions where it is determined that the health and welfare of the community requires the services of the *existing institution*. However, every effort must be made by the owners of and/or operators of all sub-standard institutions to make necessary changes and alterations in order that they may meet the minimum standards.

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1. SUBMISSION OF PLANS

a. *Temporary:*

In order to avoid unnecessary delay in securing approval for a license *or to avoid the possibility of not obtaining a license*, when construction is contemplated, either for new buildings, *additions to existing buildings*, or material alterations to existing buildings, or when it is contemplated converting a building of any kind into a hospital or related institution, the plans and outline specifications shall be submitted in duplicate to the State Board of Health for approval. The preliminary plans shall be drawn to scale and show the following:

(1) *Plot Plan*

Size and shape of entire site with over-all dimensions

Point of compass and data on prevailing and storm winds where significant

Topographical conditions and soil investigation where necessary (engineer's survey is required)

Location of proposed building on site, with existing structures and any proposed future additions.

Service roads, walks, drives, and parking areas

Buildings on adjacent properties within 40 feet of property lines (indicate type of construction and nature of use)

Existing growth (trees) and natural barriers (rocks, cliffs, streams, etc.)

Adjacent streets, highways, sidewalks, railroads, etc. (Designate major highways, county roads, or residential streets)

Show size, characteristics, and location of all existing public utilities.

(2) *Floors Plans*

Wall thickness, materials of construction, and over-all dimensions of building

Location, sizes and purposes of all rooms.

Location of all doors, windows, door swings, etc.

Location of built-in equipment and casework

Lay-outs showing plumbing, heating, ventilation, and electrical work

Location of stairs, elevators, dumb waiters, vertical shafts, and chimneys.

Tentative furniture and equipment layouts, including nurses' stations

Room finish schedule

(3) *Elevations* (same scale as plans, of at least two sides)

Finished floor and ceiling levels

Finished outside grades

Windows, doors, steps, arcways, retaining walls, etc.

Materials

(4) *Sections* (Same scale, to explain condition not made clear in other drawings)

(5) *Miscellaneous*

Title and dates of drawings including revisions

The governing authority of a hospital shall at the request of the State Board of Health submit evidence that all construction has or will take place in accordance with the approved plans and revisions thereof.

b. *Final Plans:*

After the preliminary plans and drawings have been submitted and tentatively approved by the State Board of Health, one copy will be returned to the applicant for corrections. The applicant shall then submit, in duplicate, prints of working drawings and specifications, with the required revisions, to the State Board of Health for approval before the contract is let. One set of the final approved plans shall then be returned to the applicant.

Approval in writing is required from the State Board of Health on all change orders.

2. LOCATION

In locating an institution the local zoning ordinance must be observed.

The institution shall be located on a road or highway kept passable at all times.

All hospitals constructed after July 1, 1950, shall be so located that they are free from undue noises, smoke, dust or foul odors, from railroads, freight yards, main traffic arteries, schools, children's playgrounds, airports, or industrial plants.

3. FLOORS, WALLS AND CEILINGS

All walls, floors and ceilings shall be constructed of materials that will permit frequent cleansing or washing, or disinfection necessary for the safe care of patients, and shall be free of cracks or open spaces so as to prevent the entrance and harborage of rodents, insects, etc.

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B. Fire protection

(Filed Secretary of State's office July 10, 1952.)

1. FIRE RESISTIVE RATINGS

In construction after July 1, 1950 the fire resistive rating shall comply with the National Building Code, 1949 Edition, recommended by the National Board of Fire Underwriters: In multi-storied buildings for load bearing walls and partitions, 3 hours; for non-load bearing walls and partitions, 1 hour; for floors and roof, 2 hours; and for closures to stairs, elevators, and other vertical openings, 2 hours. The fire resistive rating for one story buildings shall be 1 hour.

The fire resistive rating for all buildings existing and/or upon which construction was begun prior to July 1, 1950 shall be one hour. This requirement may be waived if the building is equipped with a standard automatic sprinkler system.

2. HAZARDOUS ELEMENTS OF CONSTRUCTION

a. *Chimneys:*

Chimneys, flues, and stovepipes shall be constructed and installed in accordance with the National Building Code, 1949 Edition, as recommended by the National Board of Fire Underwriters.

b. *Pipes:*

When steam or hot water pipes pass through walls or ceilings or are placed nearer than two inches to woodwork or any other combustible material, pipes must be protected by a suitable fire resistive shield and properly supported.

c. *Dampers:*

In construction after July 1, 1950 dampers shall be installed on all ventilating systems. Dampers shall be constructed with fusible links.

d. *Laundry chutes and dumb-waiter shafts:*

Laundry chutes and dumb-waiter shafts shall not terminate in the attic.

e. *Incinerators:*

Incinerators must be constructed and installed in accordance with the National Building Code, 1949 Edition, as recommended by the National Board of Fire Underwriters.

f. *Laundry ventilation:*

Hospitals maintaining and operating laundries shall provide ventilation for the elimination of steam and odors from patient areas.

3. FIRE FIGHTING APPARATUS

a. *Extinguisher or standpipe location:*

There shall be at least one piece of fire fighting equipment on each floor of every hospital building. Extinguishers shall be so located that a person will not have to travel more than 50 feet from any point to reach the nearest extinguisher and/or a sufficient number of wet standpipes with attached unlined hose so located that all parts of every floor area can be reached by a nozzle attached to 100 feet of hose. Extinguishers shall be hung in a public hallway at a height convenient for ready access and use. Standpipes shall be plainly visible or their location indicated.

b. *Standpipe thread:*

Outside standpipe thread must conform to thread of hose connections for local fire department.

c. *Arrangement outside city limits:*

When a hospital is located outside the range of the public fire protection, arrangements shall be made to have the fire department respond in case of fire.

d. *Hazardous areas:*

When special hazards exist, additional first aid fire fighting equipment of the type which will control these fires shall be required.

e. *Recharging of extinguishers:*

When first aid fire fighting equipment is of the type requiring recharge periodically, such extinguishers shall be recharged by a competent person at least once each year and the date of recharge shall be registered on the tag attached to the extinguisher.

f. *Fire hose connections:*

All hose connections shall be kept serviceable and have periodic inspections.

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g. Fire drills:

All employees shall be instructed in the location and use of the first aid fire fighting equipment.

4. EXITS FROM BUILDINGS

a. Location and number:

In any building housing patients there shall be more than one exit leading to the outside of the building from each floor including the basement. In construction of buildings after July 1, 1950 exits are to be located as remotely from each other as practical and shall be so arranged that there are no pockets or deadends of appreciable size in which occupants may be trapped.

b. Exit construction:

In construction prior to July 1, 1950 any building housing patients two stories or more above the ground must have enclosed emergency exits of fire resistive construction from such floors having a rating of one hour. This requirement may be waived if in lieu of enclosing the stairways the applicant complies with alternates (1) or (2):

(1) That the stair be protected with automatic sprinkler heads installed within the enclosure, or

(2) That there be a sufficient number of exits so that in case of a fire patients could be evacuated without having to use or cross any one exit.

A basement shall be considered a floor if it accommodates beds for patients.

c. Outside stairs:

All outside stairs used as fire exits must reach the ground and shall be provided with handrails. Extension to the roof of the building can be of steel ladder type, properly anchored.

d. Interior stairways:

Interior exit stairways shall be a minimum of 36 inches for existing buildings and 44 inches in width for construction after July 1, 1950 and be equipped with handrails and so located as not to present a greater than normal hazard to persons using such stairways. Exit stairs shall conform to the requirements of the Building Exits Code, 1951 Edition, of the National Fire Protection Association and amendments thereto on construction after July 1, 1950.

In construction after July 1, 1950 every room shall be connected directly to a corridor or an outside exit and shall have doors and corridors of sufficient width to allow the free removal of patients.

e. Exit door swing:

The two exit doors required from each floor shall swing in the direction of exit travel when making egress from the building. All required outside exit doors shall be equipped with latches which may be opened readily from the inside without the use of keys or any special knowledge or effort.

f. Doors from patient areas:

Doors from patient's rooms and wards shall be equipped with a lock which may be opened from either side without the use of a key or any special knowledge or effort.

g. Corridor obstructions:

Halls, corridors and all other means of egress from the building shall be maintained clear and free of fixed obstructions.

h. Exit signs:

In construction after July 1, 1950 each hospital building shall have exits marked with approved illuminated signs bearing the word "EXIT" in letters at least four inches high. In buildings existing prior to July 1, 1950 with all patients on the ground floor or with all patients ambulatory, illuminated exit signs need not be installed if the South Carolina State Board of Health does not consider same necessary. In construction prior to July 1, 1950 the reflector type exit signs are approvable.

i. Hallway and stairway illumination:

All hallways, stairs and other means of egress shall be adequately lighted at all times.

j. Ramps:

In hospital construction after July 1, 1950 exterior ramps with a slope of not more than one in eight shall be installed from the first floor to the grade to serve all portions of the building where bedridden patients are or may be placed. The width of all ramps shall be not less than four feet clear of all obstructions except handrails.

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k. *Facilities for unusual hazards:*

Where greater than normal fire or other hazard exits, additional exit facilities, ramps, fire separations, enclosures, et cetera, may be required to the extent that reasonable fire safety is provided.

5. FIRE ALARM

a. *Notification facilities:*

There shall be provision for notifying the local fire department immediately in case of fire by direct alarm or direct telephone.

b. *Warning system:*

A system of warning for fire or other emergency shall be provided.

6. VERTICAL OPENINGS

Vertical openings, such as elevator and dumb-waiter shafts, laundry chutes, et cetera, shall be lined with fire resistive material and enclosed at each floor level with an enclosure of fire resistive material having a rating of one hour. The doors leading to vertical openings shall be kept closed. This requirement may be waived if in lieu of enclosing the vertical opening at each floor level automatic sprinkler heads are installed within the vertical opening.

7. ATTIC AREAS

All openings into attic areas shall be protected by material consistent with the building construction or be equipped with a standard automatic sprinkler.

8. FURNACE ROOMS AND HEATING DEVICES

a. *Fire resistive rating:*

Heating, boiler and furnace rooms shall be separated from other parts of the building by construction having a fire resistance rating of not less than one hour. This regulation may be waived where the heating unit is a warm air furnace, except that no combustible construction adjacent to surfaces radiating heat shall be subjected to temperatures exceeding 160 degrees *F* and which is considered safe by the South Carolina State Board of Health.

Boiler rooms housing one or more steam boilers carrying more than 15 pounds pressure shall be separated from the rest of the building by construction having a fire resistance rating of not less than 2 hours, with interior door openings protected by approved fire doors of proper classification.

Where more than one boiler is installed, they shall be spaced three feet apart with three or more feet between boilers and walls. Clearance in front shall be equal to the length of the boilers or more and a minimum clearance of five feet above the boilers.

b. *Air inlet:*

A fresh air inlet vent shall be provided from the boiler or furnace room directly to the outside of the building.

c. *Unprotected openings:*

No unprotected openings of any kind shall be permitted between the boiler or furnace room enclosure with any other part of the building. In construction after July 1, 1950 all furnace rooms housing boilers of more than 15 pounds pressure shall have an outside vertical opening.

d. *Existing facilities:*

For hospitals existing prior to July 1, 1950 and with 25 beds or less the above requirements of this sub-section "8" may be waived if no undue hazards exist and where adequate fire fighting equipment and methods of evacuating patients exist, and where compliance places an undue financial burden on the hospital.

e. *Gas fired appliances:*

Gas fired hot plates, ranges, heaters, and other appliances may be used where no hazard is created but shall be serviced with rigid pipe connections.

f. *Heater installation:*

Combustible floors under all heaters shall be protected by not less than one-half inch asbestos covered with metal or a similar protection. No heaters shall be located less than 18 inches from combustible walls or ceilings unless properly insulated and protected.

g. *Fuel oil storage tanks:*

Fuel oil storage tank constructed as an integral part of the heater shall not exceed six gallons in capacity. Fuel oil storage tanks not integral with the heater shall be properly vented.

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h. Hoods, vents, ducts:

Hoods, vents, ducts, et cetera, from heating equipment, cook stoves, water heaters, sterilizing machines, ranges, et cetera, shall be installed in accordance with best practices to eliminate hazards and provide proper ventilation. Hoods and vents installed over cook stoves and ranges shall be maintained clean and free of grease accumulation at all times.

9. ELECTRICAL EQUIPMENT

a. Installation:

All electrical wiring and installations shall be installed in accordance with the provisions of the National Electrical Code, 1947 Edition.

b. Hazards:

Electric lamps and other appliances in closets or other confined locations shall be protected by wire guards if near woodwork, paper, clothing or other combustible material.

10. SPECIAL HAZARDS

a. Film Storage:

Storage and handling of other than approved safety film shall be in accordance with the National Board of Fire Underwriters' regulations.

When approved acetate base safety film is used, metal safety cabinets and film storage vaults are not required.

b. Anesthesia—handling and storage:

Combustible anesthetic gases and oxygen equipment used in hospitals shall be installed and maintained in accordance with the following: Storage rooms for anesthetic gases and oxygen shall be properly vented from the bottom by means of a fixed opening near the floor, and shall not be heated; where stored in same room, oxygen and nitrous oxide shall be stored on the opposite side of room from ether and other combustible gases; gas machines shall be inspected at regular intervals and maintained in a satisfactory condition; special precautions shall be taken to assure cleanliness in handling of all gases under pressure.

c. Outside areas:

All outside areas, grounds, and/or adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard.

d. Inflammable liquids:

The storage of inflammable liquids including gasoline, paints, oils, et cetera, is prohibited in hospital buildings unless stored in approved metal cabinets well ventilated at top and bottom, or in fire resistive rooms.

e. Basements, storerooms, attics:

When basements, storerooms, or attics are used for storage of combustible materials such as mattresses, bedding, furniture, et cetera, they shall be kept free of all trash, papers, old cloths, boxes, and all highly combustible materials. Such storage space shall be kept clean and orderly at all times. Mattresses should be stored in a small pile with sufficient space for access to all sides.

f. Rubbish disposal:

Rubbish disposal shall be in accordance with local requirements.

11. SURGERIES, DELIVERY ROOMS, MINOR SURGERIES, AND SIMILAR PLACES WHERE COMBUSTIBLE ANESTHETICS ARE USED

a. Explosion proof installations:

All electrical lighting fixtures and convenience outlets located below a level five feet from the surgery floor shall be of the explosion proof type as approved by the Underwriters' Laboratory for use in hazardous locations. The hazardous area may be considered as extending for a horizontal distance of ten feet and a height of five feet above the floor outside of any door opening into such a room. This requirement may be waived for hospitals of 25 beds or less in operation July 1, 1950.

Open gas flames, electrical heating elements, portable electric heaters and similar devices not of the type approved for use in hazardous locations shall not be used in rooms subjected to combustible anesthetics or hazardous locations.

In construction after July 1, 1950 conductive floors are required.

b. Heating:

Heating in surgeries and similar rooms shall be by steam radiator, hot water or some other device which would not contribute to the ignition of combustible anesthetics.

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c. High frequency electrical apparatus:

Every effort shall be made to prevent the use of open lights of any description, radio knives, high frequency electrical apparatus, live cauteries or any other source of ignition in the vicinity of combustible anesthetics.

d. Smoking:

Smoking is prohibited in surgeries or similar hazardous area, or within ten feet of the doorway of any room in which combustible anesthetics are being used.

Conditions arising which have not been covered in the above regulations shall be handled in accordance with the best fire prevention practices as interpreted by the South Carolina State Board of Health.

C. Accommodations for patients

1. Rooms

Patient's room shall be interpreted as an area enclosed by four ceiling high walls. In construction after July 1, 1950 each patient's room shall communicate directly with a corridor without passage through another patient's room. Rooms in existing hospitals extending below grade level shall not be used for patients, however, this regulation may be waived if the rooms are dry, well ventilated and otherwise suitable for occupancy if so considered by the South Carolina State Board of Health. Each patient's room shall be an outside room.

a. Floor area:

No hospital shall have in use more beds than the number stated in the license except in case of justified emergency.

Beds must be placed at least three feet apart so as to provide adequate room for nursing procedures.

The following allowance of floor space is a minimum for new constructions after July 1, 1950:

Rooms for only one patient	100 square feet
Rooms for two or more patients	80 square feet per bed

b. Window area:

Window space shall be at least one-eighth of the floor space.

c. Doors:

In construction after July 1, 1950 doors of all rooms through which patients are transported in wheel chairs, stretchers or beds shall have a minimum width of three feet eight inches. In existing facilities doors shall be at least thirty-two inches wide.

d. Storage space:

There shall be adequate storage space for clothing, toilet articles, and personal belongings of patients.

2. ROOM FURNISHINGS

In addition to the bed, the patient unit shall be provided with at least one chair and either a dresser or a compartment bedside table to accommodate the patient's personal possessions.

A good mattress with moisture proof covering of adequate size shall be provided for each patient. Shock bed blocks or equivalent, such as pneumatic lifter, for foot of bed shall be provided in adequate numbers.

a. Signals

There shall be an adequate call system, preferably with controlling light over patient's door, room or bed number in nurses' station, and indicator in utility room, floor kitchen, and floor treatment rooms.

b. Patient Screens

All semi-private rooms and wards shall be provided with cubicle curtains, portable screens, or equivalent equipment, which will completely shield the patient.

c. Electrical Outlets

At least one readily available electrical outlet must be provided in each room used by patients. New Construction: Electrical outlets must be provided in each private patient room and between each two beds in larger rooms for equipment requiring electricity, e. g. oxygen tent, suction machine, examining light, and similar equipment.

3. BEDSIDE EQUIPMENT

There shall be a sufficient supply of bedside equipment to render proper care to all patients.

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Thermometers, emesis basin, douche apparatus, enema apparatus, urinals, mouth wash cups, bedpans, and similar items of equipment coming into intimate contact with patients shall be sterilized after each use, unless a sufficient number is provided to furnish individual equipment for each patient.

Solution stands or attachments to the bed shall be provided for the proper administration of intravenous or subcutaneous fluids or solutions.

Hospitals shall provide oxygen for emergency treatment of patients.

All bedside equipment shall be properly cleansed and disinfected and mattress and pillows well aired and the bed remade with fresh linens before being occupied by another patient.

4. CENTRAL SUPPLY AND STERILIZING

Adequate facilities shall be provided for proper sterilization of all instruments, utensils, dressings and supplies as needed.

A recognized method of checking sterilizer performance shall be used, such as the use of a fusing control in the largest package of each load, or the bacteriological examination, at frequent intervals, of sterilized dressings.

Adequate precautions shall be taken so that sterile supplies may not be mixed with unsterile supplies.

Adequate cabinets, cupboards or other suitable enclosed spaces shall be provided for keeping equipment and supplies in a clean, convenient and orderly manner. All sterilization of supplies and equipment in a hospital shall be under the direct supervision of a registered nurse.

All containers for solutions, drugs, and medicated supplies shall be plainly labeled so as to remain legible before and after sterilization.

5. SERVICE ROOMS

In existing facilities utility rooms shall be located at least one on each floor and shall be equipped with adequate lighting and ventilation. These rooms shall be arranged to exclude patients and visitors. Supplies shall be kept in proper order so that contents are easily available for use by the staff.

There shall be satisfactory facilities for the disposal of contents of urinals and bedpans and for the sterilizing and disinfecting of these utensils. Bathtubs, lavatories or sinks of any kind shall not be used for cleaning bedpans.

New Construction: One linen closet and one supply closet shall be required for each nursing unit and a floor equipment room shall be provided to accommodate wheel stretchers and wheel chairs or adequate substitute facilities must be provided.

D. Heating

1. TEMPERATURE

The building must be equipped with a heating unit adequate to maintain a minimum temperature of 72 degrees Fahrenheit at all times in patient areas, corridors and service areas, and adequate to maintain a temperature of 80 degrees Fahrenheit in the operating rooms, nurseries, delivery rooms, recovery rooms and similar spaces.

2. BOILER-STEAM

New Construction: The boilers must generate steam at 125 pound pressure, and 100 pound pressure should be run to the laundry. Reducing valves must be provided for 50 pound pressure to sterilizers, for 20 pound pressure to kitchen or domestic hot water, and for 5 pounds where steam is used for heating.

E. Lighting

1. GENERAL

Adequate lighting must be provided.

In hospitals having operating rooms and/or delivery rooms there shall be satisfactory means of illumination of the operative field as well as general illumination.

2. EMERGENCY

Emergency lighting facilities must be provided and distributed so as to be readily available to personnel on duty.

Flashlight or battery operated lamps shall be in readiness at all times for use in delivery room and operating room. At no time may open flame type of light be used in these rooms.

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F. Ventilation

There shall be adequate gravity or forced ventilation of operating rooms, delivery rooms, utility rooms, x-ray rooms, kitchens, laundry, toilets and work rooms to prevent offensive odors from entering patient areas and public halls and there must be some means of eliminating direct currents of cold air on patients.

G. Stairways and elevators

All stairways and ramps shall be provided with handrails.

Stairways must be of a width and a design which will easily accommodate removal of patients.

New Construction: In all multi-storied hospital structures at least one elevator 5'4" x 8' inside measurements or larger shall be provided with a capacity of 3,500 pounds. Cab and shaft doors shall be not less than 3'10" clear opening. Installations shall comply with local and state codes, American Standard Safety Code for Elevators, National Electric Code, and the National Board of Fire Underwriters.

Elevators in all hospitals and machinery shall be maintained, checked and kept in good condition at all times and shall be enclosed with fireproof material and shall have an emergency signal system as well as adequate safety devices.

H. Maintenance

The hospital structure and its component parts and facilities shall be kept in good repair and operating condition.

I. Sanitation

1. WATER SUPPLY

a. *Quality*—When a municipal water supply is not available a water supply shall be provided which meets the requirements of the State Board of Health.

b. *Distribution*—Pipe sizes shall be adequate to permit an ample flow of water to the probable maximum number of fixtures which may be used at one time. The water pressure should be adequate to supply 15 pounds pressure to upper floors when the maximum number of fixtures which will be in operation at one time are supplied. If the pressure on lower floors is greater than permissible for quiet operation, reducing valves shall be employed. The water supply must be adequate to furnish a peak load of 200 gallons per bed per day.

c. *Temperature*—There shall be facilities for furnishing both hot and cold water in sufficient amounts for all purposes.

d. *Drinking Water*—Clean, sanitary drinking water shall be available and accessible in adequate amounts for all patients, employees and visitors.

e. *Ice*—At least one efficient refrigerator shall be provided on each floor. Ample supplies of ice shall be available for cooling of drinks, use in ice collars, ice packs, et cetera, on each floor. Precautions shall be enforced to prevent contamination of the ice supply in the dispensing unit.

2. SEWAGE DISPOSAL

Sewage shall be discharged into a municipal sewerage system where such a system is available; otherwise, the sewage shall be collected and disposed of in an independent sewerage system which complies with standards approved by the State Board of Health.

3. PLUMBING

a. *Construction*

Cross connections in plumbing between safe and potentially unsafe water supplies are prohibited. This refers particularly to toilets, instrument sterilizers, autoclaves, laundry fixtures, boiler rooms, bedpan washers, hoppers or other fixtures of similar nature. Water shall be delivered to any fixture, equipment or service above the rim, or points of overflow. All submerged intakes to plumbing fixtures are prohibited unless they are satisfactorily protected against back siphonage.

The plumbing and drainage or other arrangements for the disposal of excreta and infectious discharges and household waste, shall be in accordance with the best sanitary practice and the regulations of the State Board of Health.

New Construction: Each plumbing fixture and each piece of equipment must have stop valves to permit repairs without disrupting service to other fixtures and vacuum breakers. Each group of fixtures on a floor, each sink, each branch main, and each supply line shall be valved.

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b. *Facilities*

Toilet facilities shall be provided in reasonable ratio according to the number, type and sex of patients cared for and personnel.

4. GARBAGE DISPOSAL

a. *Storage and disposal*

All garbage and refuse shall be deposited in suitable watertight closed containers. These containers shall be so covered and stored as to prevent the entrance of flies and the creation of a nuisance.

b. *Cleansing*

Immediately after emptying of garbage, containers shall be properly cleansed.

5. INCINERATION

Adequate facilities shall be provided for the sanitary disposal of infected dressings, surgical and obstetrical wastes and similar materials.

6. SCREENS

a. *Facilities*

All outside doors, windows and other openings shall be screened with wire screen or its equal with not less than 16 meshes per inch.

b. *Construction*

All screen doors shall be equipped with self-closing devices, and when closed, fit tightly enough to prevent entrance of flies, mosquitoes and other insects. Window screens shall fit closely enough to keep out insects and be easily adjustable so that they will not serve as a block to exit in case of fire.

7. HANDWASHING

a. *Facilities*

There shall be adequate hand washing facilities equipped with proper faucets, controls and/or mixing valves located in every area where a sterile technique is required.

Separate hand washing facilities shall be provided in main kitchen and be so located that the person in charge may supervise hand washing by food handlers. Hand washing facilities shall be provided in utility and other service rooms and in, or adjacent to, all toilets.

A sufficient supply of linen or paper towels shall be constantly available so that a fresh towel can be used after every hand washing. Use of a common towel is prohibited.

J. Housekeeping

Adequate provision must be made for the storage of janitors' supplies and equipment.

Each room, ward, corridor, and wing shall be kept neat and clean.

Accumulated waste material must be removed daily.

There must be frequent cleaning of floors, walls, woodwork and windows.

The premises must be kept free from rodent and insect infestation.

Bath and toilet facilities must be maintained in a clean and sanitary condition at all times.

K. Linen

An adequate supply of fresh linen shall be available at all times.

Bedpan covers must not be used interchangeably.

Adequate facilities for the storage of soiled linen must be provided where needed.

L. Laundry

The institution shall make provision for the proper cleaning of adequate supply of linen and other washable goods with special provision for handling contaminated linen.

Hospitals operating laundries within buildings containing patients shall provide proper insulation to prevent the transmission of noises to patient areas.

Where linen is sent to an outside laundry, the hospital is responsible that the methods used shall render all linen safe for re-use.

M. Telephones

There shall be a telephone in the building, and additional telephones or extensions as required to summon help promptly in case of fire or other emergency, and to transact the daily business of the hospital.

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N. Isolation

In all hospitals admitting patients with a contagious disease, there shall be proper procedures, facilities, and arrangements of departments, rooms and patient beds for the prevention of cross infections; and for control of infectious, contagious and communicable diseases; and the hospital and its staff shall provide for compliance with the regulations of the State Board of Health for the control of communicable diseases.

In planning hospitals, or additions to existing hospitals, there shall be one or more rooms for isolation, according to the size of the hospital and the need of the community. Rooms planned for isolation of patients should be located either at the end of a corridor or off a subcorridor and shall have a private lavatory and toilet.

II. ADMINISTRATION

A. Organization

1. GOVERNING BOARD

The governing board, or the owner, or the person or persons designated by the owner as the governing authority shall be the supreme authority in the hospital responsible for the management, control of the hospital and appointment of the medical staff. It shall have a written set of by-laws for operation of the hospital formulated by the governing authority. The Medical staff shall be responsible to the governing authority for the clinical and scientific work of the hospital.

2. ADMINISTRATOR

The administrative officer shall be selected by the governing body, shall have charge of and be responsible for the administration of the institution in all its branches and departments and shall see that the by-laws and amendments thereto are complied with.

3. RULES AND REGULATIONS

Written policies and procedures with which each employee shall be familiar shall be established for the administrative and technical guidance of the personnel in each division of the hospital and shall be available on request at time of inspection.

B. Health of employees

The governing authority with the advice of the medical staff shall adopt rules to provide that the examining physician shall certify to the administrator or supervisor that personnel who have been absent because of any communicable or contagious disease or exposure thereto, that said employee is not suffering from any condition that may endanger the health of patients.

III. GENERAL SERVICES

A. Medical services

1. STAFF ORGANIZATION AND QUALIFICATIONS

In any hospital used by two or more physicians registered and licensed to practice the healing arts in the State of South Carolina, the medical staff shall be appointed by the governing authority and shall include all doctors who practice in the hospital and shall be an organized group who shall initiate, and, with the approval of the governing authority of the hospital, adopt rules, regulations and policies which specifically provide:

- a. To be eligible for membership on the staff the physician must be a graduate of an approved school of medicine, legally licensed to practice in the State of South Carolina, competent in his respective field, worthy in character and in matters of professional ethics.
- b. That the medical staff meetings be held at least once a month; and
- c. That the medical staff review and analyze at monthly intervals their clinical experience in the various departments of the hospital such as medical, surgery, obstetrics and other specialties, the medical records of patients, free and pay, to be the basis for such a review and analysis.

If acceptable, an applicant shall be appointed annually by the governing board and assigned definitely to one of the groups designated as:

- a. Honorary medical staff
- b. Consulting medical staff
- c. Active medical staff
- d. Associated medical staff
- e. Courtesy medical staff

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In hospitals with 25 beds or more, the organized medical staff shall annually elect a staff member to be chief of staff and it shall elect a member to be the responsible head or chief for each of the departments or services afforded by the hospital such as obstetrics, pediatrics, surgery, medicine, etc.

In hospitals of less than 25 beds, the medical staff shall annually elect one of its members to be the chief of staff.

The medical staff shall direct the internes and resident physicians in the diagnosis and treatment of all patients and in the performance of any other professional duties, in compliance with such rules for professional services of internes and resident physicians as the medical staff shall prescribe and certify to the governing body and administrative officer.

In any hospital, sanatorium or clinic admitting alcoholics and drug addicts either a physician or an interne and a registered nurse must be on duty at all times.

2. SUPERVISION OF PATIENT CARE

All persons admitted to any institution covered by these standards must be under the care of a person duly licensed to practice the healing arts in South Carolina, and an admitting and final diagnosis shall be entered in the medical record of the patient.

3. ORDERS FOR MEDICATION AND TREATMENT

No medications or treatment shall be given in institutions covered by these standards except on the signed order of a physician or one lawfully authorized to give such order. If order is given verbally it shall be recorded and signed by the person who gave the order upon their next visit to the hospital.

4. AVAILABILITY FOR EMERGENCIES

All hospitals shall have a licensed physician available on call at all times.

B. Nursing service

1. ORGANIZATION

The department of nursing shall be organized to provide complete and efficient nursing care to each patient, and the authority, responsibility and function of each nurse shall be clearly defined by regulations.

There shall be regular meetings of the nursing staff to review and analyze the nursing service to determine the quality of the nursing care rendered to patients and to increase the efficiency of the nursing service.

Applications for employment shall be submitted, in writing, to the person responsible for nursing personnel, and each application shall contain accurate information as to the education, training, experience, current state registration, and personal background of each applicant.

a. *Professional Personnel*

The hospital shall employ at least one graduate nurse registered in South Carolina who shall be available on call at all times, except in certain cases in homes for aged, nursing, chronic, convalescent, rest homes, homes for alcoholics, nervous and mental hospitals, houses for unmarried mothers, and maternity homes, and in them exceptions may be made only when given specific permission by the State Board of Health. However, graduate registered nurses employed by the Federal Government and assigned to duty in South Carolina shall have the status of graduate nurses registered in South Carolina.

All graduate nurses employed in a hospital must be registered, provided that nurses entering South Carolina from another state or graduating and completing training between meetings of the South Carolina State Board of Examination and Registration of Nurses shall qualify at the next regular meeting, and should have the general qualifications required to give expert care.

Special duty nurses shall at all times be under the supervision and direction of the director of nurses, and shall strictly comply with all hospital rules and regulations pertaining to any regular employee of the hospital.

An adequate number of trained personnel shall be employed to give adequate care to patients both day and night and to adequately staff organized departments.

b. *Other Nursing Personnel*

Licensed practical nurses, auxiliary nursing service workers, subsidiary workers, orderlies and attendants, both male and female, who are employed by hospitals in the nursing department shall be assigned only those clearly defined duties for which they are trained. They shall be under the supervision of a graduate registered nurse staff with the exception granted in sub-section "a", Professional Personnel, above.

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2. PROCEDURES

There must be a written order signed by the physician approving use of restraints either at the time they are applied to a patient, or in case of emergency, as soon as possible after they have been applied by the person in charge.

Nursing procedures shall include organized information and instruction on such routine procedures and treatments as bed-making, bed baths, enemas, temperature taking and all other routine technical services included in the nursing care program. For those procedures based on aseptic technique and involving measures for sterilization and disinfection, standard plans should be adopted and established to be followed by responsible members of the nursing staff. This applies particularly to such procedures as care of thermometers, the use of hypodermic syringes and needles, the handling of contaminated materials and equipment and all other procedures in which specific details should be carefully handled.

3. FACILITIES

There shall be an adequate nurses' station provided. There shall be at, or close by, each nurses's station a medicine cabinet with one or more locked sections for narcotics and poisons; cabinet space, bulletin board; telephone where practical; and where not practical some adequate means of communication so that help may be quickly summoned in emergency; adequate sink with running water; and adequate space provided for keeping patients' charts and for doctors and nurses to write records and charts. The medicine cabinet with separate compartments for storing poisons and medications for external use only must (a) be provided with lock and key, be kept locked when not being used, and key made available only to authorized personnel, (b) have adequate room and shelf space for storing medications and for preparation of same for administration by a registered or graduate nurse.

C. Food service

1. STORAGE, PREPARATION AND SERVICE OF FOOD

a. *Supervision*

The dietary department shall be under the supervision of a trained dietitian or a person skilled in the handling, preparation and serving of foods and the supervision and management of food handlers.

Persons handling food shall meet all requirements of the South Carolina State Board of Health regarding food handlers.

b. *Preparation and Service of Food*

All the rules and regulations of the State Board of Health of South Carolina applying to public eating and drinking establishments shall be observed.

D. Auxiliary services

1. LABORATORY

a. *Organization*

The laboratory shall be under the actual supervision of a physician, preferably one who has had special training in clinical laboratory diagnosis, whose judgment must be accepted in doubtful findings.

The laboratory personnel shall be qualified by education, training and experience for the type service rendered.

b. *Facilities*

Laboratory facilities must be provided in keeping with services rendered by the hospital.

2. MEDICAL RECORDS AND REPORTS

a. *Organization*

The responsibility for supervision, filing and indexing of medical records shall be delegated to a trained medical records librarian or to a responsible employee of the hospital.

Medical records shall be properly indexed and filed for ready access to members of the staff.

Records of patients are the property of the hospital and must not be taken from the hospital property without proper authorization of the administrative officer.

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b. *Procedures*

(1) Contents of Records

Adequate and complete medical records shall be written for all patients admitted to the hospital or newborn delivered in the hospital or home. All notes shall be legibly written or typed and signed. A minimum medical record shall include the following information:

Name and address of person or agency responsible for patient

Identification data (name, address, age, sex, marital status)

Date of admission

Date of discharge

Complaint

Referring and attending physicians' names

History of present illness

Physical examination

Special examination, if any, such as:

consultations, clinical, laboratory, X-ray and other examinations

Provisional diagnosis or working diagnosis

Medical treatment

Complete surgical record, if any, including technique of operation and findings, statement of tissue and organs removed and post operation diagnosis

Report of anesthesia

Nurses' notes

Progress notes

Gross pathological findings; microscopic pathological findings when indicated and possible

Temperature chart including pulse and respiration

Final diagnosis

Condition on discharge

In case of death—autopsy findings, if any.

It shall be the responsibility of each attending physician to complete and sign the medical record of each patient as soon as practicable after discharge

All medical records shall contain the orders of medication and treatment written in ink and signed by the prescribing physician or undersigned by him if given verbally upon his next visit to the hospital.

The official names of drugs prescribed shall be entered in the patient's record and not just a prescription number.

c. *Facilities*

Provisions shall be made for safe storage of all medical records.

All original records or photographs of same shall be stored in the hospital and none shall be disposed of under 25 years. Upon closure of a hospital, either voluntarily or by revocation of licensure, the medical records and all other required records will be kept intact and will not be destroyed without prior approval of the S. C. State Board of Health.

3. PHARMACY

a. *Organization*

Hospital pharmacies in which drugs are compounded shall be under the direction of a registered pharmacist.

b. In institutions not maintaining a pharmacy, all drugs and medicines administered to patients must be on or by the prescription of a physician or authorized person.

c. Under no condition may a drug or medicine be compounded or dispensed by anyone other than a person authorized by the laws of the State to compound and dispense drugs, medicines and physician's prescriptions.

PART TWO: GENERAL STANDARDS FOR SPECIALIZED DEPARTMENTS OR SERVICE

I. SURGERY

A. *Organization*

The operating room shall be under the supervision of a registered graduate nurse.

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B. Facilities

Surgery shall be located as not to be used as a passageway between other parts of the hospital and shall not be subject to contamination from other parts of the hospital.

Hospitals providing for the surgical care of patients shall provide for special rooms, registered graduate nursing personnel, modern surgical equipment, and instruments in good repair to assure safe and aseptic treatment of all surgical patients.

II. MATERNITY SERVICE

A. Organization

1. MATERNITY

Hospitals with ten maternity beds or less: There shall be a consulting physician or a committee of consulting physicians with duly elected chairman.

Hospitals with 11 or more maternity beds: The obstetrical service shall be under the supervision of a general staff of licensed physicians with duly elected chief. The staff shall review and analyze the obstetric work done in the hospital.

There shall be a registered nurse, responsible at all times for the nursing care of maternity patients and newborn premature infants, except when specific permission is given a maternity home to use a graduate or licensed practical nurse.

B. Procedures

1. MATERNITY

A mother shall be considered infected and therefore isolated if: she has a communicable disease or is suspected of such, or if she is a carrier; she nurses an infected infant; she is delivered outside the maternity unit of the hospital in which she is afterwards cared for; she has an unexplained fever during the puerperium. Any indication of infection must be reported immediately to the physician who has assumed responsibility for adequacy of care in the institution.

C. Facilities

1. MATERNITY

To ensure complete segregation of maternity patients and newborn infants from other types of patients, a maternity hospital operated as a part of a general hospital or maternity home shall be in a separate unit of the institution.

In new constructions for 25 or more maternity patients the maternity unit or department, and newborn nursery shall be located in a separate building, wing, floor, or in a section of the hospital physically separated from other patient areas. The corridors of the maternity unit, or department, shall not be used as a thoroughfare by personnel, visitors or patients from other sections of the hospital.

Obstetric and newborn services shall be located and arranged as to provide for complete protection of mothers and newborn infants from infection and from cross infection from patients in other services in the hospital.

There shall be provisions and policies in regard to the care of patients with an infectious, contagious or communicable disease which will insure the protection of other maternity and newborn infants.

Hospitals and maternity homes shall have facilities for blood transfusions, which shall be ready and available at all times. There shall always be available sterile sets for intravenous administration of fluids.

2. LABOR ROOM

A properly equipped labor room shall be provided in conjunction with the delivery room unless a private room is used for labor.

New construction: Labor rooms shall be in conjunction with delivery units. A minimum of one labor room shall be provided for noninfected maternity patients.

3. DELIVERY ROOM

In hospitals of more than 25 beds: a separate adequately equipped delivery room shall be provided for non-infected maternity patients apart from the general operating room.

New construction: All delivery room units shall be segregated from patient areas.

A properly heated bassinet shall be available for each delivery. There shall be no hazardous electric equipment in or on the bassinet.

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There shall be available facilities for suction, such as a tracheal catheter and equipment for administering oxygen to the infant.

An acceptable means of identifying each infant shall be available in every delivery room.

4. NURSERY

A nursery not to be used for any other purpose should be provided for the newborn.

The suspension of bassinets on hooks, against walls and on double-tier racks shall be prohibited. Bassinets shall be placed so as to protect the infant from drafts.

Nurseries shall allow an average of 25 square feet of superficial floor area per crib or bassinet, unless partitioned into cubicles, and shall be sufficiently large so that each bassinet will stand at least six inches from walls and partitions and that there will be at least two feet of floor space between bassinets to permit cribside care. If aisles are used for passageways, aisles shall be at least three feet wide.

There shall be provisions for a suspect nursery for infants suspected of contagious, infectious or communicable disease; and there shall be provisions for the complete isolation of infants with a known infectious, contagious or communicable disease.

Oxygen must be quickly and easily available in the premature nursery. When feasible oxygen piped into the premature nursery is desirable.

Incubators suitable for the care of premature infants should be provided.

The premature should be cared for in a separate nursery or should be segregated in the newborn nursery.

Any room used for the care of infants shall be provided with a reliable room thermometer near the cribs and approximately at crib level.

Glass deflectors, or other effective window ventilators, are required as protection against dust and drafts.

Dry sweeping and dusting of walls and floors is prohibited.

There shall be provided in the nursery facilities for washing or disinfecting the hands.

5. FORMULARY

Each maternity hospital shall have adequate facilities for the storage, handling and preparation of formulas for infants apart from food provided to adult patients.

Proper sterilization and refrigeration equipment shall be provided in the formula room, or where the formula is prepared, or in an adjoining room. In addition, sink, lavatory for hand washing, a means for rapidly cooling bottles for formulas after sterilization (i. e., water bath, ice bath), cupboards and a work table shall be provided.

III. PEDIATRICS

A. Organization

Hospitals providing pediatric care shall be evaluated and approved on the basis of the size of the service and competency of personnel, facilities, policies and procedures. A hospital providing care for children shall have registered nursing personnel commensurate with the needs of the hospital and the size of the service.

B. Facilities

Hospitals providing pediatric care shall have proper facilities for the caring of children apart from the services for adult patients, apart from the newborn nursing service and there shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions.

IV. ANESTHESIA

A. Procedures

Anesthesia shall be administered only by a person adequately trained and competent in anesthesia administration, or under the close supervision of such a person.

Operations under a general anesthetic (inhalation, spinal, intravenous or rectal) shall not be performed nor a general anesthetic given until the patient has had a physical examination including examination of the chest for respiratory infection or cardiac disease and including a urinalysis with tests for albumen and sugar. The results of these examinations, together with the pre-operative diagnosis, shall be entered in the patient's record. After the administration of a general or spinal anesthetic, patients shall be constantly attended by competent personnel until they have regained full consciousness, or until the effects of the anesthetic have sufficiently subsided for the patient to be able to summon aid when needed.

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V. RADIOLOGY

A. Organization

The department shall have a licensed physician in charge.

B. Procedures

A written report on each X-ray film taken shall be made and properly filed.

C. Facilities

There shall be adequate facilities for the storage and protection of X-ray film.

VI. EMERGENCY OUT-PATIENT DEPARTMENT

A. Organization

Competent personnel shall be available on call at all times for the care of emergencies for all hospitals rendering emergency care.

B. Facilities

Any hospital furnishing emergency out-patient service shall provide space and facilities for emergency treatment including the administration of blood or blood plasma and intravenous medication, facilities for the control of bleeding, and the emergency splinting of fractures, and it shall provide facilities for the administration of oxygen and anesthesia.

VII. DENTAL SURGERY

A. Organization

Hospitals with a dental service shall have a qualified practitioner of dentistry in charge of the dental unit and he shall be a member of the staff. Preference shall be given to individuals who have a specialist's license from the State Board of Dental Examiners in Oral Surgery, however, any ethical practitioner who is a member of the State Dental Association should not be barred from the hospital operating rooms if it be necessary to use them for the best interest of their patients. The dentists shall have the same relationship with the hospital as the practicing physician.

B. Facilities

There should be standardized equipment for the diagnosis and treatment of diseases of the teeth, performance of orthodontia, and rehabilitation of defective teeth and oral surgery, including all necessary anesthetic and sterilization equipment.

VIII. PHYSICAL OR PHYSIO-THERAPY

Physical or physio-therapy, if afforded as a service of the hospital, shall be under medical direction, and administered by persons properly qualified in the field of physical or physio-therapy; and adequate space and equipment shall be provided for physical or physio-therapy.

IX. OCCUPATIONAL THERAPY

Occupational therapy, if afforded as a service of the hospital, shall be under medical direction, and administered by properly qualified occupational therapists, and adequate space and equipment shall be provided for occupational therapy.

PART THREE: ADDITIONAL STANDARDS FOR INSTITUTIONS RENDERING SPECIALIZED CARE

I. TUBERCULOSIS HOSPITALS

A. Organization

Each hospital shall have either on its resident or visiting staff at least one tuberculosis specialist. In addition, arrangements shall be made to secure consultant services in other fields of medicine and surgery when conditions warrant such services.

The services of a dentist shall be provided regularly and as needed.

To operate a tuberculosis hospital the director of nurses shall have had special instruction or two years experience in tuberculosis nursing.

Part I of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

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B. Procedures

Each patient shall have a medical history taken and physical examination made by a physician as soon as practical after admission.

All patients with expectoration shall have their sputum examined for tubercle bacilli by direct smear on admission, and if the smears are negative, more sensitive methods for detection of tubercle bacilli (concentration tests, cultures or guinea pig inoculation) must be employed. Sanatoria with less than 50 beds may arrange to have an outside laboratory perform these tests. All patients who are arising, with the exception of progressive far-advanced cases, should have their sputum examined at least once a month.

All patients shall have a chest roentgenogram on admission and as often thereafter as is necessary to detect changes in the pulmonary lesions, with a maximum interval of once in four months, and within two months of discharge.

A written report on each X-ray film taken shall be made and properly filed.

Patients shall be provided with cardboard sputum boxes and paper handkerchiefs or satisfactory substitutes therefor, which shall be destroyed by incineration after use. Reasonable precautions shall be taken against exposing personnel and other patients to infection from sputum-positive cases.

An approved technique for preventing the spread of infection from the patient to employees shall be carried out. This applies particularly to the nurses giving bedside care, and masks and gowns shall be provided for their use. It is especially important that adequate handwashing facilities be provided on all floors. All employees, professional and non-professional shall be given a pre-employment physical examination including the chest x-ray, which shall also be given on leaving the employment of the institution.

C. Facilities

If the hospital operates and maintains its own laboratory, adequate space and equipment shall be provided for hematology, urinalysis, bacteriology, and sputum examination. If the hospital does not operate its own laboratory, adequate working space, equipment and supplies shall be provided for emergency laboratory work.

Each hospital, irrespective of its size, shall have x-ray equipment capable of producing satisfactory diagnostic roentgenograms of the chest. A satisfactory fluoroscope shall be provided if pneumothorax or pneumoperitoneum is done in the institution.

There must be apparatus for the administration of artificial pneumothorax.

Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored, or possessed except under the immediate supervision of a Licensed Physician or Licensed Registered Pharmacist.

If surgery is done in the institution, the rules and regulations of Part II, I Surgery of these regulations must be met.

In all multi-storied hospitals, at least one elevator or an adequate ramp shall be provided.

Rooms in existing institutions shall be of sufficient size to allow not less than 80 square feet of space per bed in 2 and 4 bedrooms and 100 square feet in single bedrooms.

New Construction: All doors to patients' rooms, except closets and cupboards, shall have a minimum width of 3 feet 8 inches.

In cottage-type sanatoria or detached buildings, used for housing small numbers of patients, a system of signaling attendants shall be provided which can be demonstrated to function effectively.

A utensil sterilizer shall be provided in each building.

Part I of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

II. NERVOUS AND MENTAL HOSPITALS

A. Organization

There shall be on duty at all times one or more registered nurses, or licensed nurses with special training or experience in the care of mental patients (also in psychiatric wards of General Hospitals.)

B. Facilities

Facilities for segregation of children from adults and patients with communicable diseases shall be provided.

Special precautions shall be taken that medicine, narcotics and poisons are not accessible to patients. Sharp instruments, knives, ice picks, or other objects which might be used for homicidal or suicidal purposes must never be left available to patients.

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Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored, or possessed except under the immediate supervision of a Licensed Physician or Licensed Registered Pharmacist.

New Construction: Minimum floor area shall be: semi-private and wards, 70 square feet per bed except for infirm and inactive patients which shall be 60 square feet per bed; private rooms 100 square feet per bed for medical, surgical, chronic disease and tubercular patients; all other types shall be 80 square feet per bed.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

III. HOMES FOR UNMARRIED MOTHERS

A. Organization

Institutions providing maternity and newborn care must have a registered nurse or licensed practical nurse in charge, responsible at all times for the nursing care of maternity patients and newborn and premature infants.

Every birth occurring in a hospital or a home for unmarried mothers shall be attended by a practitioner who is permitted to practice obstetrics in the State of South Carolina.

Nurseries shall be under the supervision of a qualified physician, preferably a pediatrician.

B. Facilities

If confinement care is offered the institution must also meet the requirements pertaining to maternity service as outlined in Maternity Service of these regulations. The regulations that follow pertain chiefly to the provision of care during the prenatal and post-confinement periods.

Satisfactory sleeping quarters. Bedrooms shall be furnished with comfortable beds, spaced at least four feet apart. Sleeping rooms should afford privacy and be available for rest periods during the day.

Adequate toilet and bathing facilities.

Satisfactory facilities for the preparation and serving of food.

Facilities for isolation as recommended by the attending physician.

Size and arrangement of the nursery will depend on the number of persons working in the nursery, as well as on the number of infants receiving care. Nursery should be large enough to minimize danger of transmitting infection, and to permit observance of good technique.

Provision should be made for individualized care of each infant.

Suitable quarters must be provided where mothers may nurse their infants.

Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored, or possessed except under the immediate supervision of a Licensed Physician or Licensed Registered Pharmacist.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

IV. MATERNITY HOMES

A. Organization

To secure a maternity home license, the institution must have only maternity patients for care. No other type of patient shall be cared for in a maternity home at any time. Boarders and lodgers shall not be accommodated and no children shall be boarded.

Patients may be accepted only upon approval of a duly qualified physician except under emergency circumstances which make it impossible to obtain prior approval for the admission of the patient.

The standards which have been adopted for the hospitals receiving maternity patients have been modified for the maternity home in order to meet the conditions which arise from the limited space and facilities, and the restricted service of such homes; however, the maternity home must conform to all of Part One and to Part Two, II, Maternity Service of these Regulations, except where specifically stated to the contrary.

Nursing care shall be under the supervision of a registered nurse or a licensed practical nurse.

The maternity home shall be under the supervision of a licensed physician in the community who will be responsible for the delivery set-up and maintain supervision over the care of the mother and baby in the home.

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B. Facilities

No patient shall be delivered in a room occupied by another patient except in emergency.

In maternity homes, if the patient's room is used for delivery, it must be of sufficient size. The room used for delivery shall be set up in accordance with the physician's instructions, and with all supplies and equipment needed. There must be adequate lighting of the delivery field. Sterile supplies may be furnished by the physician, but a complete set for at least one delivery shall be on hand at all times to meet emergencies.

Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored, or possessed except under the immediate supervision of a licensed physician or licensed registered pharmacist.

General Equipment:

Individual bath blankets shall be provided for each patient.

There shall be a separate crib or basket for each infant.

Equipment shall be provided for bathing of infants by safe and sanitary methods.

Equipment and supplies for emergencies shall be readily available at all times.

A work table shall be provided with supplies for dressing, bathing and treating of infants.

Accurate beam scales, or equivalent, are required.

Rectal thermometers and tube lubricant shall be provided. Each infant shall have an individual rectal thermometer stored in an antiseptic solution.

Freshly laundered blankets and clothing shall be supplied for each new occupant of a crib.

Care of the newborn's eyes shall comply with the State Law.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

V. HOMES FOR THE AGED

A. Organization

Homes for the aged shall arrange for a physician to act as general advisor on general health matters pertaining to the institution.

There should be one person who is definitely in charge of the nursing service who shall be a registered nurse, a licensed practical nurse or nurse with special training or experience in caring for the aged.

A physician shall be available and be called at the onset of any illness.

B. Facilities

In planning new buildings or additions to existing buildings consideration shall be given to eliminating unnecessary differences in floor levels, such as between entrance hall and porch, which might be hazardous to persons who are feeble and uncertain in step.

There shall be a light burning all night in halls and passageways, especially in halls which might be traversed to reach the bathroom.

To assist aged persons in climbing stairs as well as to obviate the danger of falling in descending stairs, there shall be handrails on the stairways.

Provision should be made for nursing care in the event that a resident becomes ill or incapacitated while in the home. This care may be provided in the resident's own quarters or in an infirmary department which is equipped for sick residents.

Equipment and supplies for first aid must be readily available at all times.

Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored, or possessed except under the immediate supervision of a licensed physician or licensed registered pharmacist.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

VI. NURSING, CHRONIC, CONVALESCENT, REST HOMES, AND HOMES FOR ALCOHOLICS

A. Organization

The person in charge of the institution must be reputable and is to be responsible for a licensed practitioner of medicine providing medical care for each patient as needed. Patients may select their own physician.

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A registered nurse or licensed practical nurse or nurse with at least two years experience in that field shall be employed and made responsible for the nursing care in that institution.

Any Clinic or Nursing Unit for alcoholics or drug addicts must have a physician, interne or a registered nurse on duty at all times.

At all times there shall be sufficient personnel in all institutions to provide adequate care for patients and to maintain satisfactory supplementary services needed by the institution.

B. Procedures

Nursing, chronic, convalescent, rest and alcoholic homes shall have administrative policies on admissions that include specific rulings on:

1. Whether to accept only men or only women or both. If both sexes are admitted, facilities shall be arranged according to need for segregation and privacy.

2. Special attention should be given to the age groups to be admitted. Children under 12 years of age shall not be admitted to institutions caring for adults, unless special segregated facilities are provided.

3. Facilities shall be adapted to the type or types of patients admitted. The following types of patients shall not be admitted:

a. Patients having or suspected of having communicable disease, including tuberculosis. If a patient develops a communicable disease after admission to a home the patient must be isolated, and arrangements made to have him transferred to another facility.

b. Carriers or persons suspected of being carriers of communicable disease.

c. Maternity patients.

d. Patients requiring surgery other than first aid.

Acutely ill and dying patients shall be admitted to accommodations that separate them from other patient contacts.

Admission of patients must also be regulated by the type of service available and in doing so discretion shall be exercised to avoid admitting patients whose disease and condition indicate the need for a type of service that is not available in that institution. Decisions on admission shall be based on medical advice.

Sound administrative policies on admission shall be supported by medical diagnoses and provision made for medical care. Patients shall not be admitted until a medical diagnosis or reliable medical opinion is known to the person responsible for patient care in the home.

After the State Board of Health has approved the admission policies and granted a license to a home, no change in these policies shall be made without written approval of the State Board of Health.

No patient shall be locked in his room without special permission from the physician. If for any reason it is necessary to lock a patient in his room the key must remain in the lock, or the door closed by a hook which can be readily unfastened by an attendant in emergency.

Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored or possessed except under the immediate supervision of a licensed physician or licensed registered pharmacist.

Medications that are not used by patients for whom they were prescribed are to be destroyed.

When the home is a part of a private home or of another institution, separate quarters shall be provided for patients so that the plan for their care and treatment may be adequately set up and supervised.

Patients must not be kept in rooms extending below the ground level.

Beds of household height may be used for aged persons; however, there shall be an adequate number of beds of hospital height, or means of elevating beds, for patients receiving bed nursing care.

In small institutions (six patients or less) side guards on the bed may be used for safety purposes.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

VII. CONTAGIOUS DISEASE HOSPITALS

To secure a license as a contagious disease hospital, an institution must be maintained in a separate building, be devoted exclusively to the care of persons who have, or are suspected of having, infectious, contagious or communicable disease.

There must, however, be rigid policies enforced by the medical, nursing, and lay staffs providing for proper isolation technique in order to prevent cross-infection between patients.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

VIII. ORTHOPEDIC HOSPITAL

To be licensed as an Orthopedic Hospital an institution must be devoted exclusively to the care of orthopedic patients, have on the staff professional personnel especially qualified in the diagnosis and treatment of orthopedic conditions.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

IX. PEDIATRIC HOSPITAL

To be licensed as a Pediatric Hospital, an institution must be devoted exclusively to the diagnosis and treatment of pediatric patients, have on the staff personnel especially qualified in the diagnosis and treatment of diseases of children.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

X. EYE, EAR, NOSE, THROAT HOSPITAL

To be licensed as an Eye, Ear, Nose, Throat Hospital an institution must be devoted exclusively to the diagnosis and treatment of conditions of the eye, ear, nose and/or throat, have on the staff personnel especially qualified in the diagnosis and treatment of diseases of the eye, ear, nose and/or throat.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

XI. INSTITUTIONAL INFIRMARIES

There shall be one person in charge who shall be a registered nurse or a licensed practical nurse.

There must be arrangements for a physician to act as general advisor of general health matters. The infirmary shall provide proper and adequate furnishings and equipment for the services rendered.

Part I and II of these regulations shall be complied with insofar as considered applicable by the South Carolina State Board of Health.

Privately owned educational institutions who maintain infirmaries for the exclusive use of their student bodies are exempt from the provisions of this Act.

Hotels

(Filed Secretary of State's office February 17, 1944.)

Section 1: Definitions:

Hotel: For the purpose of interpreting and enforcing these regulations the term "hotel" shall be construed to mean and include any place where sleeping is available to transients, whether such establishment be known as, or held to be, a hotel, inn, tavern, resort, tourist home, tourist camp, apartment, club, boarding house, or by other like term and regardless of the number of rooms, suites, or cabins available. *Provided, however,* that the term shall not be construed as to include apartments, clubs, boarding houses, rooming houses, or portions thereof, where single night accommodations are not available to transients.

Transient Guest: The term "transient guest" within the meaning of these regulations, shall mean any person who is provided with lodging for a period of less than one week at such hotel.

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Employee: The term "employee" within the meaning of these regulations shall mean any person who is employed in maid service or porter service.

Health Officer: The term "health officer" within the meaning of these regulations shall mean the health authority of the cities, and/or the counties, and/or the State or his authorized representative.

Person: The term "person" shall mean person, firm, corporation or association.

Section 2: Employees:

All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in the handling of bed clothing or equipment. Before any owner or manager of any hotel shall receive in his employ any porter, maid, or other employee, he shall require a health card showing that such employee has stood a physical examination by a reputable physician and that such porter, maid, or other employee is free from all infectious and contagious diseases and is in sound health. The applicant shall not reside in a home where there is a contagious or infectious disease.

Section 3: Notification of disease:

Notice shall be sent to the health officer immediately by the hotel owner, proprietor, manager or operator, or by the employee concerned if he or any employee contracts any infectious, contagious, or communicable disease, or has a fever, a skin eruption, a cough lasting more than 3 weeks, or any other suspicious symptom. It shall be the duty of any such employee to notify the hotel owner, proprietor, manager, or operator immediately when any of said conditions obtain, and if neither the manager nor the employee concerned notifies the health officer immediately when any of said conditions obtain they shall be held jointly and severally to have violated this section. A placard containing this section shall be posted in all toilet rooms and privies serving hotels.

Section 4: Procedure when infection suspected:

When suspicion arises as to the possibility of transmission of infection from any hotel employee the health officer is authorized to require any or all of the following measures: (1) The immediate exclusion of the employee from all hotels; (2) the immediate closing of the hotel concerned until no further danger of disease outbreak exists, in the opinion of the health officer; (3) adequate medical examinations of the employee and of his associates, with such laboratory examinations as may be indicated.

Section 5: Disinfection, fumigation and airing of rooms:

Every room, after being occupied by anyone known or suspected to be suffering from any contagious, or infectious communicable disease, or any other disease of a communicable nature, shall be rendered non-infectious according to the rules and regulations prescribed by the state board of health, before further occupancy.

Section 6: Stairways—fire escapes:

All hotels hereafter constructed in this State which are two stories in height and not over one hundred feet in length, shall be constructed so that there shall be at least two stairs for the use of guests leading from the ground floor to the uppermost story, and for larger buildings such number as the state insurance commissioner shall designate. Every hotel in this State over two stories in height shall be provided, without delay, with permanent iron balconies with iron stairs leading from one balcony to the other, above the ground floor, and with stairway or ladder extending to the ground, in case such hotel is not over one hundred and fifty feet in length, and in other cases such number as may be directed by the state insurance commissioner or agent; *provided*, that where said hotels already built which are, in the opinion of the state insurance commissioner or agent, provided with sufficient inner stairways, so located as to furnish sufficient egress in case of fire, the aforesaid official may waive the requirement for outside iron balconies and stairs. Such balconies and iron stairs shall be constructed at the expense of the owner of said hotel.

Section 7: Directions for reaching fire escapes:

In every hotel having fire escapes, directions for reaching the fire escapes shall be kept posted at the entrance of the stairways, elevator shafts, and in each bedroom above the ground floor. From eight o'clock in the evening until six o'clock in the morning the location and direction of the fire escapes shall be indicated by red lights.

Section 8: Exits from inside courts:

The owner or proprietor of every hotel now existing or hereafter constructed with an inside court or light well enclosed on all sides and with sleeping rooms or lodging apartments, the only windows of which open upon or into such court or light well, shall provide escape from such inside court or light well through room or rooms, or otherwise, on a level with the lowest floor to which the light well extends.

Section 9: Fire extinguishers to be provided:

Every hotel shall provide each floor with one or more fire extinguishers of a type approved by the National Board of Fire Underwriters, which shall be kept in good working order at all times, with operating instructions clearly printed thereon. Every floor shall have at least one efficient fire extinguisher in every fifteen hundred square feet of floor area. Each extinguisher shall be kept efficient by being refilled as often as required by the manufacturers of the extinguisher, and a tag attached to the extinguisher showing date of last refill.

Section 10: Water supplies:

Where private water supplies are installed to serve hotels where public systems are not available, those systems shall be constructed and installed in accordance with the laws of the State of South Carolina and/or rules and regulations of the state board of health. All hotel rooms that are not equipped with water under pressure and a lavatory shall be provided with a water pitcher and basin.

Section 11: Analysis of water:

A sample of water used in every hotel except in cases where the water is derived from such public water supply, shall be sent by the owner, proprietor, manager or operator to the state board of health hygienic laboratory for analysis at least every three to six months, with a certificate that it is the water used in such hotel, and if the sample is found by such analysis to be unfit for the use that is made of the water in the hotel, the further use of such water shall be discontinued until permission is granted by the state board of health to resume the use of such water.

Section 12: Sewage disposal:

In all cities, towns or villages where a system of waterworks and sewerage is maintained for public use, every hotel therein accessible to water main and sewer main shall be equipped, within six months after the passage of these regulations, with suitable water closets for the accommodation of its guests and/or employees, which water closets shall be connected and trapped by proper plumbing with such water and sewerage systems. The wash bowls in the washrooms of such hotel must be connected and trapped in similar manner, both as to method and time: all such equipment to be paid for by the owner.

Where sewage disposal systems are installed to serve hotels, where public systems are not available, these systems shall be constructed and installed in accordance with the laws of the State of South Carolina and/or rules and regulations of the state board of health.

In all towns and villages not having a public sewerage system, and for those hotels and restaurants where an approved private water carriage sewerage system is not in operation, there shall be installed properly constructed privies as approved by the state board of health, the same to be kept in a sanitary condition at all times.

Section 13: Fly screens:

The owner, proprietor, manager, or operator of every hotel shall at all times keep the outside doors, and windows screened. Every hotel must have all bedroom windows screened for protection against flies, mosquitoes, and other insects with 16 gauge mesh wire, and it shall be the duty of the owner, proprietor, manager, or operator of every hotel to use such other means as fly paper, flytraps, fly-repellent fans, etc., as may be necessary to keep the hotel reasonably free from flies.

Section 14: Cisterns and tanks:

The owner, proprietor, manager, or operator of every hotel shall keep all cisterns, tanks and other receptacles containing standing water screened with 16 gauge mesh wire, or otherwise so covered as to prevent the entrance of flies, mosquitoes, and other disease carrying insects. The term "standing water" as used in these regulations shall mean that which remains for seven days or more in a cistern, tank or other receptacle.

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Section 15: Disposal of garbage and other wastes:

Proper disposition shall be made of all wastes. All garbage shall be kept in water tight covered containers and protected from flies, rodents, and domestic animals. These containers shall be emptied and thoroughly cleaned at least once daily. They shall be on a platform at least six inches above the ground and the platform so constructed as to facilitate proper cleaning, aeration, etc.

Section 16: Heating, lighting, ventilation:

Every hotel shall be provided with adequate heating facilities. Every hotel shall be well lighted and ventilated. All toilets and washrooms of all hotels shall be provided with adequate light. The toilets and washrooms of all hotels shall be properly ventilated.

Section 17: Premises sanitary:

Every hotel shall at all times be kept free from filth and rubbish in or on the premises belonging to or connected with the same. Every hotel shall be free of breeding places of flies, mosquitoes and rodents.

Section 18: Hotel to post rates:

Every hotel shall keep posted in a conspicuous place in the office a list of its charges for rooms, with or without meals, in accordance with the plan or plans on which the hotel is operated, giving the exact transient rate, and shall also keep posted in each room the rate for that room with or without meals, in accordance with its plans as stated above, giving the transient rate per day and week, and the rate for each person in the room; also the fractional part of a day: *provided*, no hotel shall charge a higher rate for a fractional part of a day than for a whole day.

Section 19: Bedding:

The mattresses, pillows, bed coverings, and sheets used in all hotels shall be whole, in good repair and clean, and they shall be stored in clean places. All hotels shall hereafter provide each bed, bunk, cot or other sleeping place for the use of guests with pillow slips, under and top sheets to be of sufficient width to cover the mattress thereof, and to be at least ninety (90) inches long. All pillow slips and sheets shall be laundered after being used by one guest and a clean set furnished each succeeding guest.

Section 20: Bedding to be clean and free of vermin:

All beds, bedclothing, mattresses, pillows, shades, curtains, carpets, and furniture shall always be kept clean and in good repair, stored in clean places, and be kept free of vermin.

Section 21: Floors, walls, and ceilings:

The floors of all hotel rooms shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair. No sawdust shall be allowed on floors. The walls and ceilings of all hotel rooms shall be of a finish that will permit easy cleaning, shall be kept clean and in good repair.

Section 22: Lavatory facilities:

Adequate and convenient handwashing facilities shall be provided in all hotels, including running water, soap, and approved sanitary towels. Each hotel guest shall be furnished with a clean towel and individual soap, and the use of roller or other towels used in common is hereby prohibited in all hotels. All towels and bath mats shall be laundered after having been used by one guest and a clean set furnished each succeeding guest.

Section 23: Permits:

It shall be unlawful for any person to operate a hotel in the State of South Carolina, who does not possess an unrevoked permit from the health officer and in whose place of business such permit is not posted in a conspicuous place. This section shall apply to temporary or itinerant as well as to permanently established places of business. Only persons who comply with the requirements of these regulations shall be entitled to receive and retain such a permit.

Such a permit may be revoked by the health officer upon the violation by the holder of any of the terms of these regulations, or at any time when in the judgment of the health officer the hotel has become a public-health menace, provided that the holder of said permit shall, after complying with such revocation, have the right of appeal to the board of health.

Section 24: Compliance with requirements:

It shall be the duty of the health officer upon ascertaining by inspection or otherwise that any hotel is being operated contrary to any of the provisions of these regulations, to notify the manager or proprietor in what respect it fails to comply with the law, and require such person within a reasonable time to do, or to cause to be done, the things necessary to make it comply with the law; whereupon such proprietor or manager shall forthwith comply with such requirements. *Provided* that, whenever any provision of these regulations and/or the rules and regulations of the state health officer is found to be so grossly violated as to endanger the health of patrons of a hotel, the health officer may order the immediate and complete closure of such establishment in addition to revoking and declining to issue a permit for its operation. It shall be unlawful for any person to offer or provide sleeping accommodations to the public in such closed establishment until the conditions responsible for its closure have been corrected to the satisfaction of the health officer.

Section 25: Inspection:

For the purpose of carrying out the provisions of these regulations the state health officer is authorized and required to have inspected, by his designated inspectors, all hotels in the State at least once a year. If, upon inspection of any hotel it shall be found that this law has been fully complied with, the secretary of the state board of health shall issue a certificate to that effect to the person operating the same, and such certificate shall be kept posted in plain view in some conspicuous place in said hotel.

Section 26: Report of inspectors:

The health officer shall, after inspection, make a report of the conditions of the hotel inspected upon blanks to be provided by the state board of health showing in detail the condition of the hotel with reference to compliance with this law, which report shall be filed in the office of the health officer, and a copy of which report shall be filed with the manager or operator of the hotel.

Section 27: Powers of inspectors:

The health officer is hereby empowered and authorized to enter any hotel at all reasonable hours to make such inspection; and it is hereby made the duty of any person in the management or control of such hotel to afford free access to every part of the hotel, and to render all aid and assistance necessary to enable the health officer to make a full, thorough, and complete examination thereof; but no health officer shall violate the privacy of any guest without his or her consent.

Section 28: Score cards—grading:

For the purpose of carrying out the provisions of these regulations the state health officer is hereby authorized and required to prepare reasonable rules and regulations and an official score card for showing the rating of hotels that come within the meaning of these regulations. The state health officer shall prepare specific regulations, score cards, and certificates for hotels. In the case of a hotel maintaining a dining room there shall be issued two certificates—one for the hotel and one for the dining room—each based on the results as recorded on the separate score cards. After each inspection the health officer shall leave with the manager or operator of the hotel a copy of the score card showing the degree of compliance with the provisions of these regulations. At least once each year the health officer shall furnish to each hotel a certificate with the rating given to the hotel stated thereon. The manager or operator of the hotel, upon receipt of the above mentioned certificate, shall post it in a conspicuous place where it may be easily observed by guests, and shall remove and destroy the said certificate one year after the date written thereon, or at the direction of the health officer.

Section 29: Enforcement:

It is hereby provided that the enforcement of these regulations devolve upon the personnel of the state board of health and/or the county health departments and/or the city health departments, according as the state board of health may deem most wise and expedient to order and determine.

Section 30: Health officer to swear out warrants:

It shall be the duty of the health officer, in case he shall have knowledge of any violation of these regulations, and/or rules and regulations of the state health officer, to swear out a warrant against the person offending.

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Restaurants

(Filed Secretary of State's office February 17, 1944, unless otherwise noted.)

Section 1. Definitions.

The following definitions shall apply in the interpretation and enforcement of these regulations.

(a) Restaurant—The term "restaurant" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, and all other public eating and drinking establishments, as well as kitchens in which food and drink are prepared for sale elsewhere to the public.

(b) Itinerant restaurant—The term "itinerant restaurant" shall mean one operating for a temporary period in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

(c) Employee—The term "employee" shall mean any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.

(d) Utensils—"Utensils" shall include any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage preparation, or serving.

(e) Health officer—The term "health officer" within the meaning of these regulations shall mean the health authority of the cities, and/or the counties, and/or the State, or his authorized representative.

(f) Person—The word "person" shall mean person, firm, corporation, or association.

Section 2. Permits.

It shall be unlawful for any person to operate a restaurant in the State who does not possess an unrevoked permit from the health officer and in whose place of business such permit is not posted in a conspicuous place. Only persons who comply with the requirements of these regulations shall be entitled to receive and retain such a permit. A person conducting an itinerant restaurant may, in the discretion of the health officer, be exempted from the requirement of securing a permit.

Such a permit may be suspended by the health officer, or revoked after an opportunity for a hearing by the health officer, upon the violation by the holder of any of the terms of these regulations.

Section 3. Placarding or public display of grade notice.

Every restaurant shall display at all times in a place designated by the health officer, a notice approved by the health officer, stating the grade of the establishment.

Section 4. Examination and condemnation of unwholesome or adulterated food or drink.

Samples of food and drink may be taken and examined by the health officer as often as he deems necessary for the detection of unwholesomeness or adulteration. The health officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which he deems unwholesome or adulterated.

Section 5. Inspection of restaurants.

At least once every 12 months the health officer shall inspect every restaurant within the State. In case the health officer discovers the violation of any item of sanitation required for the grade then held, he shall make a second inspection after the lapse of such time as he deems necessary for the defect to be remedied, and the second inspection shall be used in determining compliance with the requirements of these rules and regulations. Any violation of the same item of these rules and regulations on two consecutive inspections shall call for immediate degrading or suspension of permit.

One copy of the inspection report shall be posted by the health officer upon an inside wall of the restaurant, and said inspection report shall not be defaced or removed by any person except the health officer. Another copy of the inspection report shall be filed with the records of the health department.

Section 6. The grading of restaurants.

The grading of all restaurants shall be based upon the following standards.

Sanitation requirements for grade A restaurants—All grade A restaurants shall comply with all of the following items of sanitation.

Item 1. Floors—The floors of all rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

Item 2. Walls and ceilings—Walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which food or drink is stored or prepared shall be finished in light color. The walls of all rooms in which food or drink is prepared or utensils are washed shall have a smooth, washable surface up to the level reached by splash or spray.

Item 3. Doors and windows—When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing, unless other effective means are provided to prevent the entrance of flies.

Item 4. Lighting—All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

Item 5. Ventilation—All rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be well ventilated.

Item 6. Toilet facilities—Every restaurant shall be provided with adequate and conveniently located toilet facilities for its employees, conforming with the rules and regulations of the state board of health. In restaurants hereafter constructed toilet rooms shall not open directly into any room in which food, drink, or utensils are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well lighted and ventilated. Hand-washing signs shall be posted in each toilet room used by employees. In case privies or earth closets are permitted and used, they shall be separated from the restaurant building, and shall be of a sanitary type construction, and operated in conformity with the standards of the state board of health.

Item 7. Water supply—The water supply shall be easily accessible to all rooms in which food is prepared or utensils are washed, and shall be adequate, and of a safe sanitary quality, and shall meet all requirements of the state board of health as to drinking water.

Item 8. Lavatory facilities—Adequate and convenient hand-washing facilities shall be provided, including warm water, soap, and approved sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands.

Item 9. Construction of utensils and equipment—All multi-use utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of a restaurant shall be so constructed as to be easily cleaned and shall be kept in good repair.

Item 10. Cleaning and bactericidal treatment of utensils and equipment—All equipment, including display cases or windows, counters, shelves, tables, refrigerators, stoves, hoods, and sinks, shall be kept clean and free from dust, dirt, insects, and other contaminating material. All cloths used by waiters, chefs, and other employees shall be clean. Single-service containers shall be used only once.

All multi-use eating and drinking utensils shall be thoroughly cleaned and effectively subjected to an approved bactericidal process after each usage. All multi-use utensils used in the preparation or serving of food and drink shall be thoroughly cleaned and effectively subjected to an approved bactericidal process immediately following the day's operation. Drying cloths, if used, shall be clean and shall be used for no other purpose.

Item 11. Storage and handling of utensils and equipment—After bactericidal treatment no utensil shall be stored except in a clean dry place protected from flies, dust, or other contamination, and no utensil shall be handled except in such a manner as to prevent contamination as far as practicable. Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean dry place until used, and shall be handled in a sanitary manner.

Item 12. Disposal of wastes—All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles, in such a manner as not to become a nuisance.

Item 13. Refrigeration—All readily perishable food or drink shall be kept at or below 50° F. except when being prepared or served. Waste water from refrigeration equipment shall be properly disposed of.

Item 14. Wholesomeness of food and drink—All food and drink shall be wholesome and free from spoilage. All milk, fluid milk products, ice cream, and other frozen desserts served shall be from sources approved by the health officer. Milk and fluid milk products

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shall be served in the original containers in which they were received from the distributor or from a bulk container equipped with an approved dispensing device; *provided*, that this requirement shall not apply to cream, which may be served from the original bottle or from a dispenser approved for such service. All oysters, clams, and mussels shall be from approved sources: *provided, further*, that approved milk shall mean A and B raw, A and B pasteurized and certified.

Item 15. Storage and display of food and drink—All food and drink shall be so stored and displayed as to be protected from dust, flies, vermin, unnecessary handling, droplet infection, overhead leakage, and other contamination. No animals or fowls shall be kept or allowed in any room in which food or drink is prepared or stored. All means necessary for the elimination of flies shall be used.

Item 16. Cleanliness of employees—All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment.

Item 17. Miscellaneous—The premises of all restaurants shall be kept clean and free of litter or rubbish. None of the operations connected with a restaurant shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

Grade B restaurants—Grade B restaurants are those which fail to comply with items 1, 2, 4, 5, or 17, but which conform to all other items of sanitation required for grade A restaurants.

Grade C restaurants—Grade C restaurants are those which fail to comply with either the Grade A or Grade B requirements.

Itinerant restaurants: A person conducting an itinerant restaurant may, in the discretion of the health officer, be exempted from the requirements of securing a permit. The health officer should approve an itinerant restaurant only if it complies with the following requirements of sanitation:

It shall be located in proper surroundings and kept in a clean and sanitary condition. It shall be so constructed and arranged that food, drink, utensils, and equipment will not be exposed to insects or to dust or other contamination. Only food and drink which is clean, wholesome and free from adulteration shall be sold or served. An adequate supply of water of safe sanitary quality shall be easily available and used for drinking and for cleaning utensils and equipment. If multi-use utensils are used in the serving of food or drink, they shall be thoroughly washed with hot water and a satisfactory detergent (as provided for in Section 6, Item 10), and rinsed with water after each use and so handled and kept as to be protected from contamination. Adequate provision shall be made for refrigeration of perishable food and drink. Ice used in or with food or drink shall be from a source approved by the health officer and so handled as to avoid contamination. In the event the establishment does not comply with the provisions of this paragraph, only single service containers shall be used.

Garbage and refuse shall be kept in tightly covered, water-tight containers until removed and shall be disposed of in a place and manner approved by the health officer. Dish water and other liquid wastes shall be disposed of so as not to create a nuisance.

No person suffering from any disease transmissible by contact or through food or drink or who is a known carrier of the germs of such a disease shall be employed in any capacity. Adequate and satisfactory toilet and hand washing facilities shall be readily accessible to employees. No person engaged in the handling or serving of food or drink shall return to his work, after using the toilet, without first thoroughly washing his hands.

Upon failure of any person maintaining or operating an itinerant restaurant, after warning, to comply with any of these requirements, it shall be the duty of the health officer summarily to forbid the further sale or serving of food or drink therein. Any person continuing to sell or serve food or drink in such a restaurant after being so forbidden, shall be subject to the penalties provided for violation of these rules and regulations and the laws of the State of South Carolina.

Itinerant restaurants shall be constructed and operated in a manner approved by the health officer.

Section 7. Grades of restaurants which may operate.

From and after 90 days from the date on which these rules and regulations take effect no restaurants shall be operated within the State unless they conform with the grade A,

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or grade B, or approved itinerant restaurant requirements of these rules and regulations: provided, that when any restaurant fails to qualify for any of these grades, the health officer is authorized to revoke the permit or in lieu thereof to degrade the restaurant and permit its operation during a temporary period not exceeding 30 days. (Filed in Secretary of State's office October 28, 1947.)

Section 8. Reinstatement of permit: supplementary regrading.

Any restaurant the grade of which has been lowered and all grade displays have been changed accordingly, or the permit of which has been suspended may at any time make application for regrading or the reinstatement of the permit.

Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated item or items of the specifications have been conformed with, the health officer shall make a reinspection, and thereafter as many reinspections as he may deem necessary to assure himself that the applicant is again complying with the higher grade requirements, and, in case the findings indicate compliance, shall award the higher grade or reinstate the permit.

Section 9. Poisonous substances.

No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleansing or polishing of utensils.

Section 10. Notification of disease.

Notice shall be sent to the health office immediately by the restaurant manager or by the employee concerned if he or any employee contracts any infectious, contagious, or communicable disease, or has a fever, a skin eruption, a cough lasting more than 3 weeks, or any other suspicious symptom. It shall be the duty of any such employee to notify the restaurant manager immediately when any of the conditions obtain, and if neither the manager nor the employee concerned notifies the health officer immediately when any of said conditions obtain they shall be held jointly and severally to have violated this section. A placard containing this section shall be posted in all toilet rooms.

Section 11. Procedure when infection suspected.

When suspicion arises as to the possibility of transmission of infection from any restaurant employee the health officer is authorized to require any or all of the following measures: (1) the immediate exclusion of the employee from all restaurants; (2) the immediate closing of the restaurant concerned until no further danger of disease outbreak exists, in the opinion of the health officer; (3) adequate medical examinations of the employee and his associates, with such laboratory examinations as may be indicated.

Section 12. Enforcement interpretation.

These rules and regulations shall be enforced by the health officer in accordance with the interpretations thereof contained in the 1940 edition of the U. S. Public Health Service Code Regulating Eating and Drinking Establishments, a certified copy of which shall be on file in the office of the Secretary of State.

Section 13. Penalties.

Any person who violates any provision of these rules and regulations or any other person who shall wilfully obstruct, hinder or interfere with the health officer in the proper discharge of his duty, or who shall wilfully fail or neglect to comply with any of the provisions hereof, after notice from the health officer or any other person in authority, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each offense, and each day of failure to comply with the provisions of these regulations shall be a separate and distinct offense. (See section 35-142 of the S. C. Code of 1952.)

Jails and Other Penal Institutions

(Filed Secretary of State's office February 17, 1944.)

Section 1: Ventilation.

All jails and other penal institutions in South Carolina must be properly ventilated. A minimum of 500 cubic feet of air space must be provided for each prisoner for his sleeping room, and proper provisions must be made so that this air be changed so as to provide 3,000 cubic feet per hour for each prisoner.

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Section 2: Heat and lighting.

All jails and other penal institutions in South Carolina must be properly heated and properly lighted.

Section 3: Floors, walls and bedding.

The floors of each jail where prisoners are confined, and each cell of the penitentiary must be cleaned daily. The walls must be kalsomined or whitewashed at least once annually. Clean bedding must be furnished in jails and other penal institutions in South Carolina.

Section 4: Water closets.

Proper water closets with adequate plumbing must be provided in all jails and the penitentiary in incorporated towns having waterworks and sewerage. These must be provided with covers and kept in a sanitary condition.

Section 5: Screening.

The windows and doors of all jails and penal institutions in South Carolina must be properly screened with 16-inch mesh wire.

Section 6: Water supply.

Pure water in sufficient amount for drinking and bathing purposes must be furnished in every jail and other penal institution in South Carolina.

Section 7: Isolation of contagious disease.

Prisoners suffering with the following contagious diseases must be isolated from the rest of the prisoners and a suitable isolation ward or room must be provided in all jails and penal institutions for tuberculosis, smallpox, diphtheria, scarlet fever, mumps, measles, whooping cough, scabies or itch, leprosy and other diseases designated as contagious by the state board of health.

Section 8: Examination of prisoners upon admission.

All prisoners admitted to any jail or other penal institutions in South Carolina must be examined within twenty-four hours after admission to determine whether they are suffering from any contagious disease.

Section 9: Bath on entrance.

All prisoners admitted to any jail and other penal institutions in South Carolina must be required to bathe all over and be provided with clothing until the clothes worn on admission have been properly disinfected and made free from vermin, should such vermin be present when the prisoners are admitted.

Section 10: Proper diet for prisoners.

All prisoners admitted to any jail and other penal institutions in South Carolina must be furnished with sufficient wholesome food, this food to be subject to inspection from time to time by the state health officer or other agent of the state board of health.

Section 11: Every room or cell occupied by any patient prisoner suffering with a communicable disease, when vacated, shall be disinfected.

Section 12: Cooking and eating apartments shall follow the same rules as those prescribed for restaurants and hotels.

Locker Plant

(Filed Secretary of State's office March 20, 1946.)

Section I: In every locker plant each room wherein meat is handled or stored shall be completely screened at doors, windows and other openings with wire gauze, 18-mesh per inch in either direction, and such gauze shall be at all times kept in perfect repair.

Section II: The floors of all locker plants shall be constructed of concrete or other equally impervious and easily cleaned material and shall be of smooth construction, properly drained, provided with trap drains and kept in a clean and sanitary condition at all times.

Section III: All walls shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth and kept clean.

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Section IV: Chopping blocks shall be scraped daily. Chopping blocks and counters must be thoroughly scoured; all knives, saws, and other implements must be washed thoroughly each day, sterilized, and maintained at all times in clean condition. Facilities for proper sterilization and scalding shall be provided.

Section V: All meat that has become tainted or attacked by putrefactive bacteria shall be removed from the premises at once and destroyed, and shall not be stored in any locker or refrigerator.

Section VI: All lockers and refrigerators shall be kept clean at all times, and maintained at temperatures recommended by the United States Department of Agriculture.

Section VII: Convenient hand-washing facilities shall be provided, including warm running water, soap, and approved sanitary towels. The use of a common towel is prohibited.

Section VIII: All food such as milk, meat, fish, vegetables, poultry, or fruits shall be kept free at all times from contamination by dirt, dust, insects or domestic animals.

Section IX: The plant shall be provided with an adequate supply of water under pressure from a source and in a manner approved by the State Board of Health. This supply shall be used for all operations of the plant. Hot water in sufficient amount for all purposes shall be available at all times when the plant is in operation.

Section X: No person shall be employed in any locker plant while afflicted with any communicable disease and employees must be free of any open cuts or lesions.

Section XI: Employees preparing food products must wear clean, white, washable oversuits or aprons, etc., which must be kept clean. Female employees must wear clean, white, washable caps covering their hair. Employees shall keep their fingernails clean. They must wash their hands before commencing work and after each absence from their work.

Section XII: All locker plants shall be provided with containers of such construction and dimensions for the reception of all garbage, refuse, offal and decaying vegetables; and they shall be water-tight, made of galvanized iron or tight wood lumber, and provided with a suitable cover, which must be kept properly adjusted at all times so as to protect the contents from flies, insects, rats and animals. All garbage or refuse containers must be emptied at least once daily. These containers shall be so constructed as to be easily cleaned, dried, and aired daily.

Section XIII: Litter, wastes or refuse shall not be allowed to accumulate in or around the building or yards of any locker plant.

Section XIV: One toilet of approved design shall be provided for every 25 persons or fractional part thereof of each sex working in the locker plant. This toilet shall be equipped with a self-closing door and shall not open into any room where food is handled, prepared and processed.

Meat and Meat Products

MEAT MARKET REGULATIONS.

(Filed Secretary of State's office January 27, 1946.)

DEFINITIONS:

- (a) The term "market" shall mean any place where meats, fish, shellfish, or poultry, whether raw, processed or prepared, are offered for sale or free distribution to the public.
- (b) The term "meat" shall mean meats, fish, shellfish, or poultry.
- (c) The term "employee" shall mean any person who handles food or drink during preparation or serving or who comes in contact with any utensils or equipment or who is employed at any time in a room in which food or drink is prepared or served.
- (d) "Utensils" shall include any saws, knives, meat blocks, containers, or other equipment with which food or drink comes in contact during storage, preparation or serving.

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REGULATIONS:

1. Floors:

The floors of every market shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair at all times. The use of clean pine sawdust is permitted on the floors, provided it is changed every other day. Adequate space shall be provided for all activities.

2. Walls and ceilings:

The walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which meats are prepared or utensils are washed shall be finished in light colors, and shall have a smooth, washable surface up to the level reached by splash or spray.

3. Doors and windows:

In every market each room wherein meat is handled or stored shall be completely screened at doors, windows and other openings with wire gauge, 18-mesh per inch in either direction, and such gauge shall at all times be kept in perfect repair. Screen doors shall be outward opening and self-closing. Flies and other insects shall be controlled.

4. Lighting and ventilation:

All rooms in which meat is stored or prepared or in which utensils are washed shall be well lighted, and adequate ventilation shall be provided.

5. Toilet facilities:

Every market shall be provided with adequate and conveniently located toilet facilities for its employees, conforming with the rules and regulations of the State Board of Health. The toilet rooms shall not open directly into any room where meat is stored or prepared or where utensils are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept clean, in good repair, and well lighted and ventilated. Hand washing signs shall be posted in each toilet room used by employees. In case privies are permitted and used they shall be separated from the market building, and shall be constructed and operated in conformity with the standards of the State Board of Health.

6. Water supply:

The water supply shall be easily accessible to all rooms in which meat is prepared or utensils are washed, and shall be adequate, and of a safe, sanitary quality, and shall meet all requirements of the State Board of Health as to drinking water.

7. Lavatory facilities:

Adequate and convenient hand-washing facilities shall be provided, including warm water, soap, and approved sanitary towels. The use of a common towel is prohibited. All employees shall wash their hands before handling any meat, and after each visit to the toilet.

8. Construction of utensils and equipment:

All utensils and all show and display cases or windows, counters, shelves, tables, knives and saws, meat blocks, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of the market shall be so constructed as to be easily cleaned and shall be kept in good repair.

9. Cleaning of equipment:

All utensils, cases, counters, shelves, tables, knives and saws, meat blocks, refrigerating equipment and all other equipment shall be thoroughly cleaned daily and shall be kept clean and free from dust, dirt, insects, and other contaminating material, at all times.

10. Storage of equipment:

All utensils and equipment shall be stored in a clean dry place protected from flies, dust, or other contamination.

11. Disposal of wastes:

All markets shall be provided with containers of such construction and dimensions for the reception of all garbage, refuse, offal, decaying vegetables, and they shall be water-tight and of easily cleanable material, provided with a suitable cover which must be kept properly adjusted at all times, so as to protect the contents from flies, insects, rodents and

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animals, or vermin. Liquid wastes shall be connected to the public sewer or as approved by the State Board of Health.

12. Refrigeration:

All ice boxes, refrigerated show cases, and all other refrigerators shall be easily cleanable and shall be kept clean and free of odors at all times. Readily perishable foods, milk, and meats shall be refrigerated at temperatures which will prevent the growth of harmful bacteria. The waste water from refrigerators shall be properly disposed of.

13. Wholesomeness of food:

All food and drink shall be wholesome and free from spoilage. All meat that has become tainted or attacked by putrefactive bacteria shall be removed from the premises at once and destroyed, and shall not be stored in any ice box or refrigerator. No foodstuff, such as milk, meat, fish, or poultry shall be exposed or exhibited on any sidewalk or alley or in any place subject to contamination, but all such food intended for human consumption and offered for sale should at all times be kept free from contamination by dust, dirt, flies, insects, cats, dogs, or other animals or other contaminating material.

14. Storage and display of food:

All dealers in foodstuff, whether to be eaten raw or cooked, such as vegetables, fruits, cakes, confections, milk, meats, etc., shall at all times keep them in such a manner that they will be free from dust, dirt, flies, insects, cats, dogs or other animals, or other contaminating material. Such foodstuff shall be protected from droplet infection and over head leakage and floors shall be protected from flooding or sewage backflow.

15. Cleanliness of employees:

All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils or equipment.

16. Miscellaneous:

The premises of all markets shall be kept clean and free of litter or rubbish. None of the operations connected with a market shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

SLAUGHTERHOUSES

(Filed in the Secretary of State's office January 27, 1946.)

Section 1. No person or persons shall build or operate any slaughterhouses in the State without the consent of the local health officer, and the keeping and slaughtering of all cattle or other animals, and the preparation and keeping of all meats, fish, birds or other animal food shall be in the manner best adapted to secure and continue their wholesomeness as food.

Section 2. No part of a diseased, deceased, or decomposed, or putrid or rotten animal, or any animal that was seriously injured at the time of slaughtering or which died a natural death, or which may be found dead shall be slaughtered, prepared, stored or processed, in or on the premises of any slaughterhouse.

Section 3. All yards, driveways, alleys, and pens connected with any slaughterhouse shall be smooth and properly graded and drained. They shall at all times be kept clean.

Section 4. The floors of all killing rooms and of all storage and other rooms where edible meat is handled or stored shall be of concrete, or its equivalent, and so constructed as to drain freely and thoroughly into traps connected with a satisfactory drain. The walls and ceiling of all such rooms shall be tight and smooth, and shall be painted as often as necessary to keep them in a neat condition, and shall be kept clean at all times.

Section 5. Every slaughterhouse shall have adequate and satisfactory reduction equipment for the disposal of all offal and condemned meat, which shall be outside of any room in which edible meat is handled, and the reduction shall be thoroughly conducted or satisfactory disposal made of all offal and condemned meat by some method satisfactory to the State Board of Health.

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Section 6. All parts of the slaughterhouse shall be adequately lighted, both naturally by a sufficient number of windows and artificially. The ventilation shall be sufficient to keep down offensive odors. All rooms shall be equipped with self-closing, properly fitting double screen doors, which shall be kept closed at all times. These rooms shall be equipped with the necessary overhead trackage, hoist, trucks, racks, tables, and other necessary equipment to conduct the business in an expeditious and cleanly manner. No workman shall spit upon the floor or the side walls of any slaughterhouse.

Section 7. Adequate refrigeration shall be provided in all slaughterhouses where meat is stored for more than a period of five hours. The refrigerating room shall be kept in a sanitary condition and maintained at temperatures which will retard the growth of bacteria.

Section 8. Properly equipped dressing rooms and toilet rooms, sufficient in number, ample in size, conveniently located, provided with windows to admit direct, natural light, properly ventilated, and meeting all requirements as to sanitary construction and equipment, shall be provided. These shall be separate from the rooms and compartments in which meat and products are prepared, stored, handled. The toilet shall be equipped with a self-closing door and shall not open directly into any room where meat or meat products are prepared, stored and handled.

Section 9. Ample, modern lavatory accommodations, including running hot and cold water, soap, towels, etc., shall be provided in such locations as may be essential to insure cleanliness of all persons handling any meat or meat products, and there shall be at least one lavatory convenient to each toilet room and urinal. Where no connections can be made to a sanitary sewer a septic tank approved by the State Board of Health shall be installed.

Section 10. An abundant supply of safe water shall be provided, which shall be delivered under pressure to all parts of the plant. Provision shall also be made for an adequate supply of hot water, delivered in pipes to the necessary places in the slaughterhouse.

Section 11. All buildings in which meat or meat products are handled and stored shall be rat proof.

Section 12. No room used for slaughtering shall be used for any other purposes incompatible therewith.

Section 13. All employees in slaughterhouses shall be provided with washable clothing and boots (or shoes) for use on the killing floor. Such boots and clothing shall be kept clean at all times.

Section 14. Before going upon the killing floor, employees shall thoroughly wash their hands. The hands shall also be washed after each visit to the toilet, and at such other intervals as may be required.

Section 15. No person shall be employed at a slaughterhouse while afflicted with any communicable disease.

Section 16. No dogs or cats shall be allowed in or around any slaughterhouse.

Section 17. The floor and side walls of the slaughtering room shall be properly washed at the end of each day's killing, and the floors, trucks and all other surfaces of the plant shall be washed and scrubbed as often as is necessary to keep them in a clean condition.

Section 18. Carcasses shall not be dressed with skewers, knives, etc., that have been held in the mouth. Spitting on whetstones or steels while sharpening knives is prohibited.

Section 19. All knives, saws, cleavers or other utensils shall be thoroughly cleaned and sterilized after each day's use and at such other times these utensils become contaminated.

Section 20. No person shall urinate, defecate, or commit any nuisance whatsoever in the slaughtering pens, or any abattoir or slaughterhouse, or within 150 feet thereof.

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TRANSPORTATION OF MEAT AND MEAT PRODUCTS.

(Filed Secretary of State's office January 27, 1946.)

1. All meat or meat products shall be transported in a clean and sanitary manner. All vehicles shall be thoroughly washed and cleaned before each loading to remove any accumulation of grease and dirt.

2. All meat or meat products shall be transported in vehicles so constructed as to protect the meat or meat products from contamination by dust, insects and the elements.

3. All meat or meat products which are in transit for a period of three hours or more shall be transported under refrigeration and shall be kept at temperatures of 50° F. or below.

4. All meat or meat products transported as unwrapped carcasses and in transit for more than three hours shall be suspended from the ceiling of the truck and shall not come in contact with the floors or side walls of the truck. On short hauls unwrapped carcasses or parts of carcasses may be stacked on the floor of the vehicle provided clean heavy wrapping papers or cloth is placed on the floor of the truck and also provided that the carcasses are so stacked that there is always a circulation of air passing between the carcasses.

5. Nothing that could contaminate the meat or meat products shall be hauled with meat or meat products.

6. Meat and meat products shall be loaded and unloaded by persons wearing clean outer garments. Meat shall be kept from coming in contact with the shoulders of persons unloading the meat by having a clean cloth placed on the shoulder.

HORSE MEAT.

(Filed Secretary of State's office December 12, 1946.)

Section 1. It shall be illegal and unlawful for any individual, firm or corporation to sell or offer for sale for human consumption, horse meat without first advising the buyer or prospective buyer, that the said meat is horse meat.

Section 2. It shall be illegal for any individual, firm or corporation to offer to the public for human consumption, any horse meat in stews, hamburgers, meat on a plate lunch, or in any form whatsoever, without having the said fact stated on the menu or by word of mouth if no menu card is used. The public must be advised before being served that the meat they are being offered for human consumption is horse meat.

Section 3. Whenever any individual, firm or corporation shall offer for sale in any container, horse meat for human consumption, the same shall appear on the label in a conspicuous and proper place in letters which shall be at least of the same height and width of any other words on said label.

Section 4. Meat markets and other places of sale shall display a placard "Horse Meat For Sale" if this item is offered for sale to the general public for human consumption. An additional placard shall be used to identify horse meat if this item is on display among other types of meat.

Penalty. Any individual, firm or corporation who shall violate, disobey, refuse, omit or neglect to comply with this rule of the State Board of Health of South Carolina, made by it in pursuance of Section 32-8 of the Code of Laws of South Carolina, 1952, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding the sum of one hundred dollars, or be imprisoned for thirty days: provided, this section shall not apply to any persons until the rules of the South Carolina State Board of Health are promulgated.

Approved and passed, this the fifth day of December, 1946, and ordered promulgated through the Secretary of State of South Carolina.

RULES AND REGULATIONS

Midwives

(Filed Secretary State's office January 27, 1946.)

MIDWIFE CERTIFICATE OF REGISTRATION.

This is to Certify that
residing at County
is duly registered with the local registrar and also at the office of the County Health
Department of the County of
This certificate is valid for the calendar year 1946 and must be renewed annually. The
midwife whose name appears above is subject to the rules and regulations of the South
Carolina State Board of Health as printed on the back of this certificate.

1946

Approved and promulgated December 1, 1945 by order of the

Executive Committee of the State Board of Health.

Signed:

Attest:

..... M. D.

County Health Officer

BEN F. WYMAN, M.D.

Secretary

..... R. N.

County Nurse

Date Issued

- I. (1) All midwives shall register with the local registrar and also at the County Health Department.
- (2) In each county midwives shall be subject to the supervision and control of the County Health Officer.
- (3) Midwives shall report to the Public Health Nurse of their county, or to the County Health Officer, whenever requested to do so.

II. Requirements for registration.

- (1) In order to secure a Certificate of Registration a midwife shall first demonstrate her ability to read and write. She shall have reasonably clear vision, average intelligence, and good general health. She shall obtain from the Health Officer or a private physician each year a certificate stating that she is free from communicable diseases.
- (2) Every midwife shall be successfully vaccinated against smallpox, inoculated against typhoid fever, and have a negative test for Syphilis or shall be non-infectious.
- (3) Before becoming eligible to register all new midwives are required to attend a course of instruction of at least ten lessons to be given to midwifery classes in the counties by either State or County Nurses, or a 2-weeks' course of instruction at an annual State or District Midwife Institute. At the conclusion of either course certificates may be granted at the discretion of the County Health Officer and upon payment of a fee of Twenty-five cents. No certificate will be issued until this course has been completed. These certificates are valid for one year only and shall be renewed each year by the County Health Officer, and may be withdrawn at the discretion of the County Health Officer. A fee of twenty-five cents shall be charged for the issuance of each certificate and for each renewal, said fee shall be paid to the County Health Officer or Nurse and forwarded to the Central Office, from whence the fund will be used for defraying expenses of State or District Midwife Institutes, or for such other purposes as may be deemed necessary. All midwives shall be required to attend such an institute at least once every 4 years.
- (4) After receiving a Certificate of Registration all midwives shall continue to attend County Midwife Classes and County Midwife Institutes.
- (5) No person who has failed to obtain and hold a certificate as set forth above shall practice midwifery in this State.

III. Regulations.

- (1) A midwife shall notify the County Health Department when she accepts a case for delivery. She should also notify the County Health Department within 24 hours after delivery of a case.

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- (2) A midwife should accept only patients who engage her before or by the 5th month of pregnancy and see that they have Prenatal Care.
- (3) A midwife may not deliver a dwarf or crippled person without written sanction from a licensed physician.
- (4) A midwife shall not go on a case without being completely equipped with all articles and supplies as prescribed on back of Midwife Individual Record Card.
- (5) A midwife before attending a woman in confinement shall wash her hands and arms with warm water and soap; and afterwards wash them in a quart of warm water containing one-half teaspoonful of lysol or other antiseptic.
- (6) She shall keep herself clean and also her patient, bed, clothing and all that comes in contact with the patient.
- (7) She shall not pass her fingers or any instruments into the birth canal of the woman for the purpose of examination or for any other purpose.
- (8) A midwife is not to give drugs of any kind except under the direction of a physician or the County Health Officer. The County Health Officer may permit her to give a laxative as needed, and Ergotrate 1/320 grain for hemorrhage or bleeding after the baby is born.
- (9) She shall not give an injection of any kind into the birth canal without orders from the doctor.
- (10) A midwife shall endeavor to secure the assistance of a physician if the child is not born after twenty-four hours of labor.
- (11) A midwife must call a doctor if anything goes wrong.
- (12) If the mother has a spasm, or bleeds either before or after the child is born, the midwife shall send at once for a physician. She shall do likewise if the mother is very weak or her labor is slow. If the mother shows signs of fever, she shall send for the physician at once without waiting until she is worse.
- (13) The cord shall be dressed at once with a clean dry dressing. No grease is to be used.
- (14) As soon as the child is born, two drops of 1 per cent solution of nitrate of silver shall be dropped into each eye. For this purpose the midwife may use only a solution put up commercially, by a reliable drug supply house, in wax ampules. Drug Store preparations or other preparations may not be used.
- (15) Every case of "baby's sore eyes" or reddening of the eyelids shall be reported at once to a physician and to the County Health Department.
- (16) A midwife may not leave one case to go on another or attempt to handle two or more deliveries at the same time.
- (17) The midwife must remain with her patient for a period of not less than 2 hours following delivery.
- (18) Every midwife shall report all births she attends within ten days to the local registrar.
- (19) If a baby is born too soon (before full term) a midwife shall report it to the County Health Department as soon as the baby is born.

IV. Penalty.

Any person violating any of the above rules or regulations shall, upon conviction, be punished as provided in § 32-17. (This section provides that any one failing to comply with any of the rules or regulations of the Executive Committee of the State Board of Health shall, upon conviction, be fined not to exceed \$100.00 or imprisoned not to exceed thirty days.)

Milk and Milk Products

Pursuant to § 32-8, S. C. Code of 1952.

(Filed Secretary of State's office February 17, 1944, except as otherwise noted.)

Section 1. Definitions.

The following definitions shall apply in the interpretation and the enforcement hereof:

A. Milk—Milk is hereby defined to be the lacteal secretion obtained by the complete milking of one or more healthy cows, excluding that obtained within 15 days before and 5 days after calving, or such longer period as may be necessary to render the milk practically colostrum free; which contains not less than 8 percent of milk solids not fat, and not less than 3.8 percent of milk fat; PROVIDED, that whole milk containing less than 3.8 percent of milk fat, but containing not less than 3.0 percent milk fat may be sold as "milk" by producers to pasteurizing plants only, but no pasteurizing plant may sell or distribute

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any bottled or packaged fluid milk labeled as "milk" unless the same shall contain not less than 3.8 percent of milk fat.

(Amended December 13, 1950; Filed with Secretary of State January 11, 1951)

B. Milk fat or butter fat—Milk fat or butter fat is the fat of milk.

C. Cream and sour cream—Cream is a portion of milk which contains not less than 18 percent milk fat. Sour cream is cream the acidity of which is more than 0.20 percent, expressed as lactic acid.

D. Skimmed milk—Skimmed milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk-fat percentage to less than 3.8 per cent. (Filed Secretary of State's office May 19, 1950.)

E. Milk or skimmed-milk beverage—A milk beverage or a skimmed-milk beverage is a food compound or confection consisting of milk or skimmed milk, reconstituted or recombined milk or cream, as the case may be, to which has been added a sirup or flavor consisting of wholesome ingredients; said beverage shall contain not less than 8 percent of milk solids not fat, and not less than 2 percent of milk fat. Grade "A" flavored milk shall be made only of Grade "A" constituents. (Filed Secretary of State's office January 11, 1951.)

F. Buttermilk—Buttermilk is a product resulting from the churning of milk or cream, or from the souring or treatment by a lactic acid or other culture of milk, skimmed milk, reconstituted, skimmed milk, evaporated or condensed milk or skimmed milk, or milk or skimmed-milk powder. It contains not less than 8 percent of milk solids not fat.

G. Vitamin D milk—Vitamin D milk is milk the vitamin D content of which has been increased by a method and in an amount approved by the health officer.

H. Reconstituted or recombined milk and cream—Reconstituted or recombined milk is a product resulting from the recombining of milk constituents with water, and which complies with the standards for milk fat and solids not fat of milk as defined herein. Reconstituted or recombined cream is a product resulting from the combination of dried cream, butter, or butterfat with cream, milk, skimmed milk, or water. Reconstituted or recombined milk and cream as herein defined may not be considered, sold or offered for sale as fluid "milk" or "cream".

(Amended December 13, 1950; Filed with Secretary of State January 11, 1951)

I. Goat milk—Goat milk is the lacteal secretion, free from colostrum, obtained by the complete milking of healthy goats, and shall comply with all the requirements of these Regulations. The word "cows" shall be interpreted to include goats.

J. Homogenized milk—Homogenized milk is milk which has been treated in such manner as to insure break-up of the fat globules to such an extent that after 48 hours storage no visible cream separation occurs on the milk and the fat percentage of the top 100 cc. of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than 5 percent of itself from the fat percentage of the remaining milk as determined after thorough mixing.

K. Milk products—Milk products shall be taken to mean and include cream, sour cream, homogenized milk, goat milk, vitamin D milk, buttermilk, skimmed milk, reconstituted or recombined milk and cream, milk beverages, skimmed-milk beverages, and any other product made by the addition of any substance to milk or any of these products and used for similar purposes and designated as a milk product by the health officer.

L. Pasteurization—The terms "pasteurization," "pastenrized," and similar terms shall be taken to refer to the process of heating every particle of milk or milk products to at least 143° F., and holding at such temperature for at least 30 minutes, or to at least 160° F., and holding at such temperature for at least 15 seconds, in approved and properly operated equipment: *provided*, that nothing contained in this definition shall be construed as debarring any other process which has been demonstrated to be equally efficient and is approved by the state health officer.

M. Adulterated milk and milk products—Any milk or milk product which contains any unwholesome substance, or which if defined in these Regulations does not conform with its definition, or which carries a grade label unless such grade label has been awarded by the health officer and not revoked, shall be deemed adulterated and misbranded.

N. Milk producer—A milk producer is any person who owns or controls one or more cows a part or all of the milk or milk products from which is sold or offered for sale.

O. Milk distributor—A milk distributor is any person who offers for sale or sells to another any milk or milk products for human consumption as such.

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P. Dairy or dairy farm—A dairy or dairy farm is any place or premises where one or more cows are kept a part or all of the milk or milk products from which is sold or offered for sale.

Q. Milk plant—A milk plant is any place or premises or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, or prepared for distribution; PROVIDED, that for the purpose of inspection and grading of "milk" as herein provided, any receiving or collecting station shall be considered an integral part of the pasteurizing plant at which the milk is finally pasteurized, bottled, packaged and prepared for distribution to consumer; and the grade of milk pasteurized, bottled, packaged and prepared for distribution at such plant shall be the same grade as the lowest grade milk received or collected at receiving or collecting stations which supply "milk" to such plant. This amendment shall be effective May 1, 1951.

(Amended December 13, 1950; Filed with Secretary of State January 11, 1951)

R. Health officer—The term "health officer" shall mean the state health officer or his authorized representative.

S. Average bacterial plate count, direct microscopic count, reduction time, and cooling temperature—Average bacterial plate count and average direct microscopic count shall be taken to mean the logarithmic average, and average reduction time and average cooling temperature shall be taken to mean the arithmetic average, of the respective results of the last four consecutive samples, taken upon separate days, irrespective of the date of grading or regrading.

T. Grading period—The grading period shall be such a period of time as the health officer may designate within which grades shall be determined for all milk and milk products, provided that the grading period shall in no case exceed 6 months.

U. Person—The word "person" as used in these Regulations shall mean "person, firm, corporation, or association."

V. And/or—Where the term "and/or" is used "and" shall apply where possible, otherwise "or" shall apply.

Section 2. The sale of adulterated, misbranded, or ungraded milk or milk products prohibited.

No person shall within the State, produce, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated, misbranded, or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to have in possession any adulterated, misbranded, or ungraded milk or milk product.

Section 3. Permits.

It shall be unlawful for any person to bring into or receive into this State for sale, or to sell, or offer for sale therein, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in these rules and regulations, who does not possess a permit from the health officer.

Only a person who complies with the requirements of these rules and regulations shall be entitled to receive and retain such a permit.

Such a permit may be suspended by the health officer, or revoked after an opportunity for a hearing by the health officer, upon the violation by the holder of any of the terms of these rules and regulations.

Effective September 1, 1951, it shall be unlawful to sell or offer for sale for human consumption in this State, any fluid milk which has not been produced, or produced and pasteurized, and bottled or packaged within the routine limits of inspection of this State and under surveillance of the South Carolina State Health Officer, and no permit shall be thereafter issued authorizing such sale; PROVIDED, that this provision shall not prevent the issuance of permits allowing the shipment to processors or pasteurizing plants in this State of raw milk in bulk, as approved by the State Health Officer.

(Amended December 13, 1950; Filed with Secretary of State January 11, 1951)

Section 4. Labeling and placarding.

All bottles, cans, packages, and other containers enclosing milk or any milk product defined in these rules and regulations shall be plainly labeled or marked with (1) the name of the contents as given in the definitions in these rules and regulations; (2) the grade of the contents; (3) the word "pasteurized" only if the contents have been pasteurized; (4) the word "raw" only if the contents are raw; (5) the phrase "for pasteurization" if the contents are to be pasteurized; (6) the name of the producer if the contents are raw, and the name of the plant at which the contents were pasteurized, if the contents are

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pasteurized; and (7) in the case of vitamin D milk, the designation "Vitamin D Milk" and the source of the vitamin D. The label or mark shall be in letters of a size, kind, and color approved by the health officer and shall contain no marks or words which are misleading; PROVIDED, that no container which encloses any reconstituted or recombined milk or cream shall be labeled "milk" or "cream", nor shall any such milk product be sold or offered for sale as fluid milk or cream in this State; PROVIDED FURTHER, that the words "chocolate milk" or any other named milk beverage bearing the word "milk" combined with any other words indicating that the content is chocolate milk or a milk beverage shall not be used on any container unless the content thereof is a milk beverage as defined in these regulations.

Every restaurant, cafe, soda fountain, or other establishment serving milk or milk products shall display at all times, in a place designated by the health officer, a notice approved by the health officer, stating the lowest grade of milk and/or milk products served.

(Amended December 13, 1950; Filed with Secretary of State January 11, 1951)

Section 5. Inspection of dairy farms and milk plants for the purpose of grading or regrading.

At least once during each grading period the health officer shall inspect all dairy farms and all milk plants whose milk or milk products are intended for consumption within the State. In case the health officer discovers the violation of any item of sanitation, he shall make a second inspection after a lapse of such time as he deems necessary for the defect to be remedied, but not before the lapse of 3 days; and the second inspection shall be used in determining the grade of milk and/or milk products. Any violation of the same item of these rules and regulations on two consecutive inspections shall call for immediate degrading.

One copy of the inspection report shall be posted by the health officer in a conspicuous place upon an inside wall of one of the dairy farm or milk plant buildings, and said inspection report shall not be defaced or removed by any person except the health officer. Another copy of the inspection report shall be filed with the records of the health department.

Section 6. The examination of milk and milk products.

During each grading period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined by the health officer. Samples of other milk products may be taken and examined by the health officer as often as he deems necessary. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the health officer may require. Bacterial plate counts and direct microscopic counts shall be made in conformity with the latest standard methods recommended by the American Public Health Association. Examinations may include such other chemical and physical determinations as the health officer may deem necessary for the detection of adulteration, these examinations to be made in accordance with the latest standard methods of the American Public Health Association and the Association of Official Agricultural Chemists. Samples may be taken by the health officer at any time prior to the final delivery of the milk or milk products. All proprietors of stores, cafes, restaurants, soda fountains, and other similar places shall furnish the health officer, upon his request, with the names of all distributors from whom their milk and milk products are obtained. Bio-assays of the vitamin D content of vitamin D milk shall be made when required by the health officer in a laboratory approved by him for such examinations.

Whenever the average bacterial count, the average reduction time, or the average cooling temperature falls beyond the limit for the grade then held, the health officer shall send written notice thereof to the person concerned, and shall take an additional sample, but not before the lapse of 3 days, for determining a new average in accordance with section 1 (S). Violation of the grade requirement by the new average or by any subsequent average during the remainder of the current grading period shall call for immediate degrading or suspension of the permit, unless the last individual result is within the grade limit.

Section 7. The grading of milk and milk products.

At least once every 6 months the health officer shall announce the grades of all milk and milk products delivered by all producers or distributors and ultimately consumed within the State. Said grades shall be based upon the following standards, the grading of

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milk products being identical with the grading of milk except that the bacterial standards shall be doubled in the case of cream, and omitted in the case of sour cream and buttermilk. Vitamin D milk shall be only of grade A or grade B pasteurized, certified, or grade A raw quality.

Certified milk-raw—Certified milk-raw is raw milk which conforms with the requirements of the American Association of Medical Milk Commission in force at the time of production and is produced under the supervision of the state board of health.

Grade A raw milk—Grade A raw milk the average bacterial plate count of which as determined under sections 1 (S) and 6 herein does not exceed 50,000 per cubic centimeter, or the average direct microscopic count of which does not exceed 50,000 per cubic centimeter if clumps are counted or 200,000 per cubic centimeter if individual organisms are counted, or the average reduction time of which is not less than 8 hours: *provided*, that if it is to be pasteurized the corresponding limits shall be 200,000 per cubic centimeter, 200,000 per cubic centimeter, 800,000 per cubic centimeter, and 6 hours, respectively; and which is produced upon dairy farms conforming with all of the following items of sanitation.

Item 1r. Cows, tuberculosis and other diseases—A tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every 12 months thereafter, by a licensed veterinarian approved by the State livestock sanitary department. Said tests shall be made and any reactors disposed of in accordance with the requirements approved by the United States Department of Agriculture, Bureau of Animal Industry, for accredited herds. A certificate signed by the veterinarian or attested to by the health officer and filed with the health officer shall be evidence of the above test.

Within 5 years after the adoption of these rules and regulations all milk and milk products consumed raw shall be from herds or additions thereto which have been found free from Bang's disease, as shown by blood serum tests for agglutinins against *Brucella abortus* made in a laboratory approved by the health officer. All such herds shall be retested at least every 12 months and all reactors removed from the herd. A certificate identifying each animal by number, and signed by the laboratory making the test, shall be evidence of the above test.

Cows which show an extensive or entire induration of one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd. Cows giving bloody, stringy, or otherwise abnormal milk, but with only slight induration of the udder, shall be excluded from the herd until re-examination shows that the milk has become normal.

For other diseases such tests and examinations as the health officer may require shall be made at intervals and by methods prescribed by him, and any diseased animals or reactors shall be disposed of as he may require.

(Amended March 17, 1948; Filed with Secretary of State May 20, 1948)

Item 2r. Dairy barn, lighting—A dairy or milking barn shall be required and in such sections thereof where cows are milked windows shall be provided and kept clean and so arranged as to insure adequate light properly distributed, and when necessary shall be provided with adequate supplementary artificial light.

Item 3r. Dairy barn, air space and ventilation—Such sections of all dairy barns where cows are kept or milked shall be well ventilated and shall be so arranged as to avoid overcrowding.

Item 4r. Dairy barn, floors—The floors and gutters of such parts of all dairy barns in which cows are milked shall be constructed of concrete or other approved impervious and easily cleaned material, *provided* that if the milk is to be pasteurized tight wood may be used, shall be graded to drain properly, and shall be kept clean and in good repair. No horses, pigs, fowl, calves, etc., shall be permitted in parts of the barn used for milking.

Item 5r. Dairy barn, walls and ceilings—The walls and ceilings of all dairy barns shall be whitewashed once each year or painted once every 2 years, or oftener, if necessary, or finished in an approved manner, and shall be kept clean and in good repair. In case there is a second story above that part of the barn in which cows are milked, the ceiling shall be tight. If the feed room adjoins the milking space, it shall be separated therefrom by a dust-tight partition and door. No feed shall be stored in the milking portion of the barn.

Item 6r. Dairy barn, cowyard—All cowyards shall be graded and drained as well as practicable and kept clean.

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Item 7r. Manure disposal—All manure shall be removed and stored or disposed of in such manner as best to prevent the breeding of flies therein or the access of cows to piles thereof.

Item 8r. Milk house or room, construction—There shall be provided a milk house or milk room in which the cooling, handling, and storing of milk and milk products and the washing, bactericidal treatment, and storing of milk containers and utensils shall be done. (a) The milk house or room shall be provided with a tight floor constructed of concrete or other impervious material, in good repair, and graded to provide proper drainage. (b) It shall have walls and ceilings of such construction as to permit easy cleaning, and shall be well painted or finished in an approved manner. (c) It shall be well lighted and ventilated. (d) It shall have all openings effectively screened including outward-opening, self-closing doors, unless other effective means are provided to prevent the entrance of flies. (e) It shall be used for no other purposes than those specified above except as may be approved by the health officer; shall not open directly into a stable or into any room used for domestic purposes; shall, unless the milk is to be pasteurized, have water piped into it; shall be provided with adequate facilities for the heating of water for the cleaning of utensils; shall be equipped with two-compartment stationary wash and rinse vats, except that in the case of retail raw milk, if chlorine is employed as the principal bactericidal treatment, the three-compartment type must be used; and shall, unless the milk is to be pasteurized, be partitioned to separate the handling of milk and the storage of cleansed utensils from the cleaning and other operations, which shall be so located and conducted as to prevent any contamination of the milk or of cleaned equipment.

Item 9r. Milk house or room, cleanliness and flies—The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All means necessary for the elimination of flies shall be used.

Item 10r. Toilet—Every dairy farm shall be provided with one or more sanitary toilets conveniently located and properly constructed, operated, and maintained, so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

Item 11r. Water supply—The water supply for the milk room and dairy barn shall be properly located, constructed, and operated, and shall be easily accessible, adequate, and of a safe sanitary quality.

Item 12r. Utensils, construction—All multi-use containers or other utensils used in the handling, storage, or transportation of milk or milk products must be made of smooth nonabsorbent material and of such construction as to be easily cleaned, and must be in good repair. Joints and seams shall be soldered flush. Woven wire cloth shall not be used for straining milk. All milk pails shall be of a small mouth design approved by the health officer. The manufacture, packing, transportation, and handling of single-service containers and container caps and covers shall be conducted in a sanitary manner.

Item 13r. Utensils, cleaning—All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk and milk products must be thoroughly cleaned after each usage.

Item 14r. Utensils, bactericidal treatment—All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products shall between each usage be subjected to an approved bactericidal process with steam, hot water, chlorine, or hot air.

Item 15r. Utensils, storage—All containers and other utensils used in the handling, storage, or transportation of milk or milk products shall be stored so as not to become contaminated before being used.

Item 16r. Utensils, handling—After bactericidal treatment no container or other milk or milk product utensil shall be handled in such manner as to permit any part of any person or his clothing to come in contact with any surface with which milk or milk products come in contact.

Item 17r. Milking, udders and teats, abnormal milk—The udders and teats of all milking cows shall be clean and rinsed with a bactericidal solution at the time of milking. Abnormal milk shall be kept out of the milk supply and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils.

Item 18r. Milking, flanks—The flanks, bellies, and tails of all milking cows shall be free from visible dirt at the time of milking.

Item 19r. Milkers' hands—Milkers' hands shall be clean, rinsed with a bactericidal solution, and dried with a clean towel immediately before milking and following any

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interruption in the milking operation. Wethand milking is prohibited. Convenient facilities shall be provided for the washing of milkers' hands.

Item 20r. Clean clothing—Milkers and milk handlers shall wear clean outer garments while milking or handling milk, milk products, containers, utensils, or equipment.

Item 21r. Milk stools—Milk stools shall be kept clean.

Item 22r. Removal of milk—Each pail of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the dairy barn.

Item 23r. Cooling—Milk must be cooled immediately after completion of milking to 50° F. or less, and maintained at that average temperature, as defined in section 1 (S), until delivery. If milk is delivered to a milk plant or receiving station for pasteurization or separation, it must be delivered within 2 hours after completion of milking or cooled to 70° F. or less and maintained at that average temperature until delivered.

Item 24r. Bottling and capping—Milk and milk products shall be bottled from a container with a readily cleanable valve, or by means of an approved bottling machine. Bottles shall be capped by machine. Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean dry place until used.

Item 25r. Personnel, health—The health officer or a physician authorized by him shall examine and take a careful morbidity history of every person connected with a retail raw dairy, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him for such examinations, and if the results justify such person shall be barred from such employment.

Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health officer may require for the purpose of determining freedom from infection.

Item 26r. Miscellaneous—All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun and from contamination. All vehicles used for the transportation of milk or milk products in their final delivery containers shall be constructed with permanent tops and with permanent or roll-down sides and back, provided that openings of the size necessary to pass the delivery man may be permitted in the sides or back for loading and unloading purposes. All vehicles shall be kept clean, and no substance capable of contaminating milk or milk products shall be transported with milk or milk products in such manner as to permit contamination. All vehicles used for the distribution of milk or milk products shall have the name of the distributor prominently displayed.

The immediate surroundings of the dairy shall be kept in a neat, clean condition.

Grade B Raw Milk—Grade B raw milk which violates the bacterial standard and/or the abortion testing requirements for grade A raw milk, but which conforms with all other requirements for grade A raw milk, and has an average bacterial plate count not exceeding 1,000,000 per cubic centimeter, or an average direct microscopic count not exceeding 1,000,000 per cubic centimeter if clumps are counted or 4,000,000 per cubic centimeter if individual organisms are counted, or an average reduction time of not less than 3½ hours, as determined under sections 1 (S) and 6.

Grade C Raw Milk—Grade C raw milk is raw milk which violates any of the requirements for grade B raw milk.

Certified Milk-Pasteurized—Certified milk-pasteurized is certified milk-raw which has been pasteurized, cooled, and bottled in a milk plant conforming with the requirements for grade A pasteurized milk.

Grade A Pasteurized Milk—Grade A pasteurized milk is grade A raw milk, with such exceptions as are indicated if the milk is to be pasteurized, which has been pasteurized, cooled, and bottled in a milk plant conforming with all of the following items of sanitation and the average bacterial plate count of which at no time after pasteurization and until delivery exceeds 30,000 per cubic centimeter, as determined under sections 1 (S) and 6.

The grading of a pasteurized-milk supply shall include the inspection of receiving and collecting stations with respect to items 1p to 15p, inclusive, and 17p, 19p, 22p and 23p, except that the partitioning requirement of item 5p shall not apply.

Item 1p. Floors—The floors of all rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall be constructed of concrete or other

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equally impervious and easily cleaned material and shall be smooth, properly drained, provided with trapped drains, and kept clean.

Item 2p. Walls and Ceilings—Walls and ceilings of rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall have a smooth, washable, light-colored surface, and shall be kept clean.

Item 3p. Doors and Windows—Unless other effective means are provided to prevent the access of flies, all openings into the outer air shall be effectively screened and doors shall be self-closing.

Item 4p. Lighting and Ventilation—All rooms shall be well lighted and ventilated.

Item 5p. Miscellaneous Protection from Contamination—The various milk-plant operations shall be so located and conducted as to prevent any contamination of the milk or of the cleaned equipment. All means necessary for the elimination of flies shall be used. There shall be separate rooms for (a) the pasteurizing, processing, cooling, and bottling operations, and (b) the washing and bactericidal treatment of containers. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. Rooms in which milk, milk products, cleaned utensils, or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurization plant shall be used for no other purposes than the processing of milk and milk products and the operations incident thereto, except as may be approved by the health officer.

Item 6p. Toilet facilities—Every milk plant shall be provided with toilet facilities conforming with the rules and regulations of the State. Toilet rooms shall not open directly into any room in which milk, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well ventilated. In case privies or earth closets are permitted and used, they shall be of a sanitary type constructed and operated in conformity with the requirements of item 10r, grade A raw milk.

Item 7p. Water supply—The water supply shall be easily accessible, adequate, and of a safe, sanitary quality.

Item 8p. Hand-washing facilities—Convenient hand-washing facilities shall be provided, including warm running water, soap, and approved sanitary towels. The use of a common towel is prohibited.

Item 9p. Sanitary piping—All piping used to conduct milk or milk products shall be "sanitary milk piping" of a type which can be easily cleaned with a brush. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary milk piping.

Item 10p. Construction and repair of containers and equipment—All multi-use containers and equipment with which milk or milk products come in contact shall be constructed in such manner as to be easily cleaned and shall be kept in good repair. The manufacture, packing, transportation, and handling of single-service containers and container caps and covers shall be conducted in a sanitary manner.

Item 11p. Disposal of wastes—All wastes shall be properly disposed of.

Item 12p. Cleaning and bactericidal treatment of containers and equipment—All milk and milk products containers and equipment, except single-service containers, shall be thoroughly cleaned after each usage. All containers shall be subjected to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty and before being returned to a producer by a milk plant each container shall be effectively cleaned and subjected to bactericidal treatment.

Item 13p. Storage of containers and equipment—After bactericidal treatment all bottles, cans, and other multi-use milk and milk-products containers and equipment shall be stored in such manner as to be protected from contamination.

Item 14p. Handling of containers and equipment—Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such manner as to permit contamination of the milk.

Item 15p. Storage of caps, parchment paper, and single-service containers—Milk-bottle caps or cap stock, parchment paper for milk cans, and single-service containers shall be purchased and stored only in sanitary tubes and cartons, and shall be kept therein in a clean dry place.

Item 16p. Pasteurization—Pasteurization shall be performed as described in section 1 (L) of these rules and regulations.

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Item 17p. Cooling—All milk and milk products received for pasteurization shall immediately be cooled in approved equipment to 50° F. or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within 2 hours after receipt; and all pasteurized milk and milk products shall be immediately cooled in approved equipment to an average temperature of 50° F. or less, as defined in section 1 (S) and maintained thereat until delivery.

Item 18p. Bottling—Bottling of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment.

Item 19p. Overflow milk—Overflow milk or milk products shall not be sold for human consumption.

Item 20p. Capping—Capping of milk and milk products shall be done by approved mechanical equipment. Hand capping is prohibited. The cap or cover shall cover the pouring lip to at least its largest diameter.

Item 21p. Personnel, health—The health officer or a physician authorized by him shall examine and take morbidity history of every person connected with a pasteurization plant, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the State health authorities for such examinations, and if the results justify such person shall be barred from such employment.

Such person shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health officer may require for the purpose of determining freedom from infection.

Item 22p. Personnel, cleanliness—All persons coming in contact with milk, milk products, containers, or equipment shall wear clean outer garments and shall keep their hands clean at all times while thus engaged.

Item 23p. Miscellaneous—All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun and from contamination. All vehicles used for the transportation of milk or milk products in their final delivery containers shall be constructed with permanent tops and with permanent or roll-down sides and back, provided that openings of the size necessary to pass the delivery man may be permitted in the sides or back for loading and unloading purposes. All vehicles shall be kept clean, and no substance capable of contaminating milk or milk products shall be transported with milk or milk products in such manner as to permit contamination. All vehicles used for the distribution of milk or milk products shall have the name of the distributor prominently displayed.

The immediate surroundings of the milk plant shall be kept in a neat, clean condition.

Grade B pasteurized milk—Grade B pasteurized milk is pasteurized milk which violates the bacterial standard for grade A pasteurized milk and/or the provisions of lip-cover caps of item 20p and/or the requirement that grade A raw milk be used, but which conforms with all other requirements for grade A pasteurized milk, has been made from raw milk of not less than grade B quality, and has an average bacterial plate count after pasteurization and before delivery not exceeding 50,000 per cubic centimeter, as determined under sections 1 (S) and 6.

Grade C pasteurized milk—Grade C pasteurized milk is pasteurized milk which violates any of the requirements for grade B pasteurized milk.

Section 8. Grades of milk and milk products which may be sold.

From and after the date on which these rules and regulations take effect no milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except A, B, and C raw, A and B pasteurized or certified; PROVIDED, that when any milk distributor fails to qualify for one of the above grades the health officer is authorized to revoke his permit, or in lieu thereof to degrade his product and permit its sale during a temporary period not exceeding 30 days or in emergencies such longer period as he may deem necessary. The State Health Officer shall issue no permit to an applicant for a grade of milk or cream higher than the lowest grade of milk or cream the applicant produces or obtains from others.

(Amended May 15, 1950; filed with Secretary of State May 19, 1950)

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Section 9. Supplementary grading prescribed and regrading authorized.

If at any time between the regular announcements of the grades of milk or milk products, a lower grade shall become justified, in accordance with sections 5, 6, and 7 of these rules and regulations, the health officer shall immediately lower the grade of such milk or milk products, and shall enforce proper labeling and placarding thereof.

Any producer or distributor of milk or milk products, the grade of which has been lowered by the health officer, and who is properly labeling his milk and milk products, may at any time make application for the regrading of his product.

Upon receipt of a satisfactory application, in case the lowered grade is the result of an excessive average bacterial plate count, direct microscopic count, reduction time, or cooling temperature, the health officer shall take further samples of the applicant's output, at a rate of not more than two samples per week. The health officer shall regrade the milk or milk products upward whenever the average of the last four sample results indicates the necessary quality, but not before the lapse of 2 weeks from the date of the degrading.

In case the lowered grade of the applicant's product is due to a violation of an item of the specifications prescribed in section 7, other than average bacterial plate count, direct microscopic count, reduction time, or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications has been conformed with. Within 1 week of the receipt of such an application and statement the health officer shall make a reinspection of the applicant's establishment, and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the higher grade requirements, and, in case the findings justify, shall regrade the milk or milk products upward, but not before the lapse of 2 weeks from the date of degrading.

Section 10. Transferring or dipping milk; delivery containers; handling of more than one grade; delivery of milk at quarantined residences.

Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container to another on the street, or in any vehicle or store, or in any place except a bottling or milk room especially used for that purpose. The sale of dip milk is hereby prohibited.

All pasteurized milk and milk products shall be placed in their final delivery containers in the plant in which they are pasteurized, and all raw milk and milk products sold for consumption in the raw state shall be placed in their final delivery containers at the farm at which they are produced. Milk and milk products sold in the distributor's containers in quantities less than 1 gallon shall be delivered in standard milk bottles or in single-service containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries, and similar establishments to sell or serve any milk or milk product except in the original container in which it was received from the distributor or from a bulk container equipped with an approved dispensing device: *provided*, that this requirement shall not apply to cream consumed on the premises, which may be served from the original bottle or from a dispenser approved for such service.

It shall be unlawful for any hotel, soda fountain, restaurant, grocery, or similar establishment to sell or serve any milk or milk products which have not been maintained, while in its possession, at a temperature of 50° F. or less.

No milk or milk products shall be permitted to come in contact with equipment with which a lower grade of milk or milk products has been in contact unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment.

Bottled milk or milk products, if stored in water, shall be so stored that the tops of the bottles will not be submerged.

It shall be the duty of all persons to whom milk or milk products are delivered to clean thoroughly the containers in which such milk or milk products are delivered before returning such containers. Apparatus, containers, equipment, and utensils used in the handling, storage, processing, or transporting of milk or milk products shall not be used for any other purpose without the permission of the health officer.

The delivery of milk or milk products to and the collection of milk or milk-products containers from residences in which cases of communicable disease transmissible through milk supplies exist shall be subject to the special requirements of the health officer.

Section 11. Milk and milk products from points beyond the limits of routine inspection.

Milk and milk products from points beyond the limits of routine inspection of the State may not be sold in the State unless produced and/or pasteurized under provisions equivalent to the requirements of these regulations: *provided*, that the health officer shall satisfy

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himself that the health officer having jurisdiction over the production and processing is properly enforcing such provisions.

Section 12. Future dairies and milk plants.

All dairies and milk plants from which milk or milk products are supplied to the State which are hereafter constructed, reconstructed, or extensively altered shall conform in their construction to the requirements of these regulations for grade A and B dairy farms producing milk for consumption in the raw state, or for grade A pasteurization plants, respectively: *provided*, that the requirement of a two-room milk house shall be waived in the case of dairies the milk from which is to be pasteurized. Properly prepared plans for all dairies and milk plants which are hereafter constructed, reconstructed, or extensively altered shall be submitted to the health officer for approval before work is begun. In the case of milk plants signed approval shall be obtained from the health officer, and/or the state health department.

Section 13. Notification of disease.

Notice shall be sent to the health officer immediately by any producer or distributor of milk or milk products upon whose dairy farm or in whose milk plant any infectious, contagious, or communicable disease occurs.

Section 14. Procedure when infection suspected.

When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of milk or milk products, the health officer is authorized to require any or all of the following measures: (1) The immediate exclusion of that person from milk handling, (2) the immediate exclusion of the milk supply concerned from distribution and use, (3) adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges.

Section 15. Enforcement interpretation.

These rules and regulations shall be enforced by the health officers in accordance with the interpretations thereof contained in the 1939 edition of the United States public health service milk code, a certified copy of which shall be on file in the office of the Secretary of State.

The State Board of Health recommends that municipalities adopt the State Milk ordinance with the following exceptions in Section 8: Grades of milk to be sold: A grade raw, B grade raw to pasteurization plants, A and B pasteurized and certified pasteurized.

Production, Storage, Transportation and Selling of Milk and Milk Products

Public Health Bulletin No. 220, 1939 Edition, known as the Milk Ordinance and Code, United States Public Health Service, approved and adopted by State Board of Health as official method of interpreting the rules and regulations, heretofore promulgated and filed, governing production, storage, transportation and selling of milk and milk products.

SCHOOL MILK PROGRAM—TYPE III UNPASTEURIZED MILK RULES AND REGULATIONS OF SOUTH CAROLINA STATE BOARD OF HEALTH

(Filed Secretary of State's office December 19, 1942.)

Preamble

Realizing that there exists an emergency, and that it is impossible to build and equip dairies in accordance with our standards for "A" grade milk, the State Board of Health feels the necessity for adopting the minimum requirements for milk which can be sold to schools.

Since the World War II began and the Government has concentrated such large numbers of troops throughout our entire State, along with their families and employees which are hired in the defense areas, the demand for a higher grade of milk, not only in the State of South Carolina, but in other war areas, has completely depleted the areas of the higher grades of milk.

As a result of the efforts of the Agricultural Marketing Administration and the State Department of Education to establish in all the schools throughout the State a proper milk program, confusion has arisen in the minds of the health officers and other persons concerned, as to whether or not our present milk ordinance, which provides for the sale

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of three grades of milk in the raw stage, can be applicable, especially "C" grade, which is labeled "For Cooking Purposes Only," and is not recommended by the State Board of Health for use in restaurants or lunch rooms.

TYPE III—Unpasteurized milk is a title which has been adopted by the State Board of Health as the minimum requirements for milk which is to be sold to the schools throughout the State, located in those areas where the higher grades of milk are not available. The word "Type III" comes from the Army, which means that the milk has been inspected, and in the opinion of the inspecting officers is a wholesome potable milk which is then sent to a Grade "A" pasteurizing plant, where it is properly pasteurized and bottled and distributed to the troops. It is impossible for the State Board of Health to recommend that Type III milk be pasteurized, due to the lack of facilities in certain areas of the State. However, Type III milk must not be regarded as an unsafe milk, as it is felt that the requirements hereinafter detailed raise this type of milk above grade "C" milk, which, it is declared, must be labeled "For Cooking Purposes Only." The State Board of Health believes that, while the milk produced under these rules and regulations does not meet the standards of milk produced by accredited dairies, still if these rules and regulations are carried out, the milk produced will be a potable wholesome product.

These requirements will last during that time which the President of the United States declares that there exists a national emergency.

Rules and Regulations

The standards governing the production of milk for the School Milk Program which pertain to the health of cattle and milk handlers, cleanliness, cooling, sterilization, equipment and supplies, etc., shall be those having force and effect in the vicinity in which the milk is produced, as outlined by local ordinances and/or the State Board of Health, except that no milk shall be accepted unless it meets the standards of production, delivery, and serving outlined herein.

These rules shall be in effect where higher grades of milk are not available. However, where the higher grades of milk are available, the school shall purchase same.

Item 1. Cows.

All milk and milk products, consumed raw, shall be from herds or additions thereto which have been found free from Bang's Disease, as shown by blood serum tests for agglutinins against *Brucella Abortus* made in a laboratory approved by the health officer. Dr. W. K. Lewis, State Veterinarian of the Clemson Livestock Sanitary Extension Service, will run serum tests if sent to his office. All such herds shall be retested every 12 months, and all reactors removed from the herd. A certificate identifying each animal by number, and signed by the laboratory making the test, shall be evidence of the above test. Cows which show an extensive or entire induration of one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd. Cows giving bloody, stringy, or otherwise abnormal milk, but with only slight induration of the udder, shall be excluded from the herd until re-examination shows that the milk has become normal. For other diseases, such tests and examinations as the health officer may require shall be made at intervals and by methods prescribed by him, and any diseased animals or reactors shall be disposed of as may be required.

All milk must be colostrum free—that is, milked from cows 5 days before calving and 15 days after calving—and shall be excluded for human consumption until such time as it is colostrum free. South Carolina is an accredited State for the control of tuberculosis in cattle.

Item 2. Dairy barns, milking stables.

The stables in which the cows are housed shall be cleaned and thoroughly bedded with clean bedding daily. The floors of the milking barn or stable where the cows are milked, shall be cleaned after each milking. The walls and ceilings shall be free of cobwebs, dust and litter.

Item 3. Milk room.

The room in which the milk is strained, bottled, or canned shall be kept clean and free from flies. The walls and ceilings shall be free of cobwebs, dust and litter.

Item 4. Toilets.

Each dairy shall be provided with a sanitary toilet approved by the State Board of Health.

Item 5. Water supply.

The water supply shall meet the standards of drinking water which are approved by the State Board of Health, and shall be so located that it will not become contaminated.

Item 6. Utensils.

Each dairy farm shall have one well tinned, seamless, or well soldered milk pail for each milker. All milk cans shall be well tinned, seamless, or seam soldered flush milk cans. The milk strainer shall be of seamless or seam soldered flush well tinned cotton disc type. All other equipment in which milk comes in contact shall be of the same type of material as that above. No broken, rusty, or bent equipment shall be used in the handling of milk.

Item 7. Washing of equipment.

All equipment used in the dairy must be rinsed in cold water, thoroughly cleaned with a brush and with alkaline washing powder. (No soap or any kind of wash rag shall be used.)

Item 8. Sterilization of equipment.

After each usage all equipment used in the dairy shall be submerged in boiling water for 5 minutes and submerged in a chlorine solution of not less than 50 ppm for 3 minutes. It is mandatory that all surfaces of the equipment be subjected to the boiling water and the chlorine solution for the time specified. Just before milking, each piece of equipment shall be rinsed in a chlorine solution of the same strength as mentioned above. After each 10 gallons of milk strained, the cotton discs shall be renewed.

Item 9. Storage.

After washing of utensils, all equipment shall be stored in an inverted position in a dry place, free of dust and flies. Cotton discs used in the straining of milk shall be kept in the original container and stored in a clean dry place.

Item 10. Care of equipment.

After bactericidal treatment no equipment shall be handled in such a manner as to become recontaminated.

Item 11. Udders and teats.

Udders and teats of all cows shall be cleaned and sterilized with a chlorine solution of not less than 50 ppm just before each milking. The flanks and tails of the cows shall be free of visible dirt before milking.

Item 12. Hand washing facilities.

Hand washing facilities shall be conveniently provided. The milkers shall wash and sterilize their hands before milking with a chlorine solution of not less than 50 ppm. Wet-hand milking shall not be permitted.

Item 13. Clothing.

Clean outer garments shall be worn by the milker during the time he is handling the milk.

Item 14. Milk stools.

Each milker shall be provided with a milk stool that can be kept clean and is clean. The milk stool shall be stored above the floor.

Item 15. Cooling.

Where electric refrigeration or ice is not available, the milk shall be cooled by fresh cold water, and the water shall be changed after the first hour. Night's milk that has been cooled shall not be mixed with the morning's milk until the morning's milk has been cooled to the same temperature as that of the night's milk.

Item 16. Bottling.

Where bottling and capping are used, no hand capping will be permitted.

Item 17. Health certificate.

All persons on farms having any connection with the handling or delivery of such milk shall be free from all communicable diseases, as attested by a certificate from local health authorities or local physicians. In the case of a communicable disease on the farm, it shall be reported to the county health department at once.

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Item 18. Delivery.

Milk, if delivered in open vehicles, shall be protected from dust and contamination by being covered. Each dairyman producing milk shall prepare his milk for delivering as a separate unit. No combining of milk by more than one dairyman in one can shall be permitted.

Item 19. Odors and flavors.

Milk must be delivered free from all odors and all flavors. No milk shall be accepted which has any trace of onions, bitter weeds, or other feed flavors.

Item 20. Statement of dairymen.

A statement by the dairymen producing and delivering milk under these rules and regulations shall certify that these rules and regulations have been met, and the statement shall accompany each invoice.

The State Board of Health will make the inspections of the dairies and will advise with the school authorities as to whether the dairies have met with the regulations. It is understood that the school authorities shall make periodic inspections of the dairies to see that they conform to these rules and regulations.

It shall be the responsibility of the local school authorities, after the milk has been delivered to the schools, to immediately store this milk in the original containers, in either freshly drawn water changed every hour, or in an ice box, or in a wet-can type refrigerator. When the original container is opened by school authorities for serving, the top and lip of the can shall be wiped off thoroughly, with a clean cloth which has been rinsed in a chlorine solution of not less than 50 ppm. Any dipper, pitcher, or other utensil used in transferring or dipping the milk from the original container to school lunch glasses or sanitary cups shall be well tinned, of the seamless type, or having well soldered seams with no crevices in the lip or lids of such container, or juncture of the handle to such container, in order that such utensils can be easily washed and sterilized. If the dipper, pitcher, or other utensil used during the serving of the milk, in transferring or dipping milk from the original container, is put down, or placed on some surfaces, they shall be rechlorinated in a proper chlorine solution of not less than 50 ppm. If any drinking glass or cup, other than sanitary cups, are used, they shall be of such type as can be easily cleaned and sterilized. Utensils or service containers used in the serving of the milk to children shall be immediately washed after use, immediately sterilized in boiling water or any known chlorine solution of 50 ppm or more, and stored in a clean dry place, free from the possibility of recontaminating the milk. The milk must be thoroughly agitated while being served.

The cans from which the milk is served shall be thoroughly washed before being return to the dairyman.

Mineral Oil

(Filed Secretary of State's office December 12, 1946.)

Section 1. On account of its deleterious effect in the human body, therefore being a health hazard, the use of mineral oil or other non-edible or non-nutritious oil in any food or food product offered for sale, whether as mayonnaise or a salad dressing in proper containers, or as mayonnaise or a salad dressing prepared by individual restaurants or other food manufacturers or processors, and served to individuals as food or as an addition to food during any meal, shall be construed as food adulteration within the meaning of the statutes of the laws of South Carolina.

Section 2. It shall be illegal and unlawful for anyone to manufacture, sell or offer for sale any food product in which mineral oil is used or substituted for edible oils or other dressing.

Penalty. Any individual, firm or corporation who shall violate, disobey, refuse, omit or neglect to comply with this rule of the State Board of Health of South Carolina, made by it in pursuance of Section 32-8, of the Code of Laws of South Carolina, 1952, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding the sum of one hundred dollars, or be imprisoned for thirty days: provided, this section shall not apply to any persons until the rules of the South Carolina State Board of Health are promulgated.

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Miscellaneous Regulations

(Filed Secretary of State's office February 17, 1944.)

Section 1. All textile and industrial plants, mercantile establishments and other places where more than five people are employed are required to furnish their employees sanitary drinking fountains, or individual sanitary drinking cups, and to keep receptacles in which drinking water is kept properly covered so as to exclude dust, etc.

Section 2. Drinking fountains—If drinking fountains are furnished and are the bubbling type, they shall be so made that the drinking is from a free jet projected at an angle to the verticle, and not from a jet that is projected vertically or that flows through a filled cup or bowl.

Section 3. Spitting on the floors or walls of any public buildings, boats, railroad cars, buses, or any buildings opened to or frequented by the public is hereby strictly forbidden.

Control of Mosquito Production on Impounded Waters

(Filed Secretary of State's office May 19, 1950.)

In order to safeguard the public health, and to prevent the incidence of insect-borne diseases, under and by virtue of authority vested in it by the Legislature of South Carolina in Section 32-8, S. C. Code of 1952, the South Carolina State Board of Health by and through the Executive Committee, at a meeting held in Columbia, South Carolina, by Resolutions duly passed, adopted the following rules and regulations, and does hereby promulgate and publish the same which shall govern the impounding of waters or damming of water courses in the State of South Carolina. These rules and regulations amend and supplement rules and regulations adopted October 2, 1924 and promulgated October 31, 1924; which rules and regulations are repealed by said Resolutions and the following adopted in their stead:

Section 1. Any person, firm, corporation, association, county, municipality, or other political subdivision, and any state or federal government, agency, department, or authority of the same who shall propose or desire to construct an impoundment of 1/10 acre or more in area for any purpose whatever or who shall propose or desire to raise the elevation of a previously existing pond or other body of water, shall, prior to the initiation of any construction activities, make application to and obtain from the State Board of Health a construction permit for the impounding of such water.

Section 2. Such application for a construction permit shall be made in writing in the name of the person, firm, corporation, association, county, municipality, or other political subdivision, and any state or federal government, agency, department, or authority of the same making application, and shall be accompanied by a description of the proposed project, its purpose, and its exact location, an accurate plat of the area to be affected showing particularly the maximum and minimum water elevations, and a copy of detailed specifications for clearing the proposed reservoir.

Section 3. A construction permit for the inauguration of initial construction shall be issued by the State Board of Health subject to the following rules and regulations, or modifications thereof approved by the Executive Committee of the State Board of Health.

Section 3a. In the area to be occupied by the reservoir, its branches, bights, and indentations, all brush, trees, and undergrowth below the minimum low-water elevation shall be cut off not more than 18" above the normal ground elevation and shall be removed or burned or otherwise disposed of in a manner satisfactory to the Executive Committee of the State Board of Health, Provided, that, on the approval of the Executive Committee of the State Board of Health grass, vegetation, brush, trees, stumps, and similar materials, which will be permanently and completely submerged at time of minimum low water, may be left in their original positions.

Section 3b. In the area to be occupied by the reservoir, its branches, bights, and indentations, all brush, trees, logs, undergrowth, stumps, and other objects below the minimum low water elevation, which if not removed would pierce the water surface at minimum low water elevation or float on the surface of the impounded water soon after the impounding of the water and all of the above material that is lying on the ground or

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remaining in the original or new positions which might cause collections of floatage and thus constitute conditions favorable to the protection of larvae of mosquitoes, shall be removed or burned or otherwise disposed of in a manner satisfactory to the Executive Committee of the State Board of Health prior to the impounding of water.

Section 3c. In the area to be occupied by the reservoir, its branches, bights and indentations, all brush, trees, and undergrowth between the minimum and maximum operating water elevations shall be cut off not more than 6" above the normal ground elevation and shall be removed or completely burned prior to the impounding of water to prevent the collection and anchorage of any floatage, rafts, and similar materials.

Section 3d. All depressions which will be filled with water from the reservoir, its branches, bights, or indentations at time of maximum water elevation, in which water will be retained at lower stages of the water level, thus forming separate pools, shall be connected with the normal body of the reservoir or any of its branches, bights, or indentations by a ditch or culvert which will permit complete drainage, or shall be controlled by the regular periodic use of approved larvicides as permitted and directed by the Executive Committee of the State Board of Health.

Section 3e. All laborers employed in the construction of the dam and the impounding of the water and appurtenant work, and housed in camps, barracks, or other communal houses, shall be protected from mosquitoes in a manner satisfactory to the Executive Committee of the State Board of Health.

Section 4. A construction permit for the impounding of water having been granted by the Executive Committee of the State Board of Health, and construction work on the project begun, a representative or representatives of the State Board of Health shall make inspections of the project from time to time and as requested by the permit holder; and the Executive Committee of the State Board of Health shall approve that portion of the work as is outlined in Section 3 of the regulations which has been satisfactorily completed. As the said representative of the State Board of Health determines that the construction permit holder has complied with the provisions of Subsections 3a and 3b of these regulations and as it shall appear that the construction permit holder is complying with the provisions of Subsection 3c of these regulations the permit holder may thereupon proceed as authorized by approval from the Executive Committee of the State Board of Health, with the impounding of water to a level specified by said Executive Committee of the State Board of Health, and, when it shall appear that the permit holder has complied with the provisions of Subsections 3a, 3b, 3c, and 3d of these regulations to the satisfaction of the Executive Committee of the State Board of Health, said Executive Committee of the State Board of Health shall certify such fact to the permit holder in writing and the permit holder may thereupon proceed with the impounding of water to maximum operating water elevation.

Section 5. The Executive Committee of the State Board of Health shall thereupon issue a maintenance permit for the maintenance of an impounding project by said applicant, the validity of such permit being contingent upon the observance of the following regulations:

Section 5a. During the mosquito producing season the permit holder shall regularly and frequently remove all floatage and floating debris in the reservoir, its branches, bights, and indentations which are producing mosquitoes, and shall during mosquito producing season apply such larvicides as are approved by and in a manner satisfactory to the Executive Committee of the State Board of Health to all mosquito producing areas of the reservoir or parts of the impounded waters.

Section 5b. The shoreline of the reservoir, its branches, bights, and indentations shall be maintained clear of all brush and undergrowth.

Section 5c. Prompt and proper measures shall be taken to prevent the growth of cat-tails, bulrushes, alligator weed and other aquatic and semi-aquatic vegetation which offer protection for mosquito larvae.

Section 5d. After the water has been impounded the Executive Committee of the State Board of Health through its representative shall make such inspections of the impounded waters and adjacent areas as are deemed essential; and any conditions found on the im-

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pounded water project that are, or may be detrimental to the public health, shall be corrected by the permit holder in a manner satisfactory to the Executive Committee of the State Board of Health.

Section 5e. These regulations shall govern any change in water elevation and as soon as any proposed changes affecting the maximum operating elevation are contemplated, the Executive Committee of the State Board of Health shall be notified in writing.

Section 6. Failure to comply with the provision of any Section or Subsection of these regulations, after notice thereof, constitutes a violation thereof, and shall constitute, according to Section 32-17 Code of 1952, a misdemeanor, punishable as provided in that Section.

Nuisances—Defined

(Filed Secretary of State's office February 17, 1944.)

Section 1. Whatever is dangerous to human health, whatever renders the ground, air or food a hazard or injury to human health, and the following acts, conditions and things are, each and all of them, hereby declared to constitute a nuisance:

(a) The maintenance of any barn, stable, chicken yard or manure pile in such manner that the same is a breeding place for flies or liable to become so if within 500 feet of a residence.

(b) The deposit of garbage in any but fly-proof and watertight receptacles, where residences are less than 500 feet apart.

(c) The accumulation of water in which mosquito larvae may breed.

(d) Growth of weeds where mosquitoes may harbor or rubbish may be concealed, where residences are less than 500 feet apart.

(e) The maintenance of any except sanitary privies where residences are less than 500 feet apart.

(f) The keeping of any building, or any part of a building, which, on account of its dilapidated condition or its occupancy by any person afflicted with communicable disease, or by filthy tenants, may endanger the life or health of residents therein or in the vicinity thereof.

(g) The discharge of sewage, garbage or any other organic filth into or upon any place in such manner that transmission of infective material to human beings may result therefrom.

(h) The maintaining or carrying on of manufacture of chemicals, or any other trade or manufacture in such manner as to be a menace to the public health through improper or inadequate disposal of dust wastes or fumes.

Section 2. No house refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste of any kind shall be thrown upon any street, road, or public place; and no such refuse, putrescible or decaying animal or vegetable matter shall be kept in house, cellar, or adjoining outhouses or premises for more than forty-eight hours in any incorporated or unincorporated city, town, village, or built-up community. All receptacles for such garbage, etc., shall be so constructed as to be of sufficient dimensions for the reception of all garbage, and shall be water-tight, made of tight-matched lumber or galvanized iron, and shall stand at least nine inches from the ground, and be provided with a suitable cover, which must be kept properly adjusted to same, so as to protect the contents from flies, insects, rats and animals, or vermin. All garbage or refuse contents must be emptied at least once every forty-eight hours.

Pit Privies

(Filed Secretary of State's office February 17, 1944.)

Section 1. All sanitary privies constructed in the State under §§ 32-1221 to 32-1231, Code 1952, shall conform to plans and specifications of the state board of health, which will be furnished by the local county health officer.

Section 2. They shall be maintained in the following manner:

(1) Place about half a bushel of stable manure in the new pit.

(2) Keep all parts of building clean and in good repair.

(3) Should the pit cave in it must be repaired promptly.

(4) The lid on the seat must be kept closed at all times when it is unoccupied.

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(5) Only toilet paper should be used. Other heavier material will cause the pit to fill more rapidly.

(6) Permit no light to enter the pit through small holes or cracks. The presence of cracks allows flies to enter. Keep the screening on the riser ventilator in good repair.

(7) During the months from April to October a cup full of kerosene emptied into the pit once a week will tend to prevent the possible breeding of mosquitoes.

(8) When the privy contents reach within 18 inches of the top of the pit the building must be removed to a new pit and the old pit completely filled with earth.

(9) The mound must be maintained at all times in such a manner that it will have a smooth, gentle slope from mud sill to original ground surface.

Section 3. When any privy is to be condemned it shall be in the following manner:

(a) A notice shall be nailed on the door of the privy stating that it is not being maintained in a sanitary manner, and that it will have to be put in a sanitary condition before the elapse of seven days. This notice is to be signed and dated by the county health officer. When the seven days have elapsed an inspection shall be made, and if the privy is still in an unsanitary condition, the following notice shall be nailed across the door so that it will have to be broken: "Unsanitary, Unlawful to use," and signed by the county health officer.

Poultry Processing Plants

(Filed Secretary of State's office December 14, 1950.)

Section 1. Definitions.

(a) "Poultry" means any kind of domesticated bird, including, but not being limited to, chickens, turkeys, ducks, geese, pigeons, and guineas.

(b) The term "Poultry Processing Plants" shall mean any place or establishment where domestic fowls, such as chickens, turkeys, ducks, geese, pigeons, and guineas are slaughtered for human consumption.

(c) The term "Processor" shall mean any plant primarily converting live poultry to dressed poultry. Any wholesaler or jobber who converts live poultry to processed poultry shall be considered, for purposes of these regulations, a Processor.

(d) The term "Processed Poultry" shall mean any poultry item which has been dressed, whether drawn or undrawn.

(e) The word "Person" shall mean any person, firm, corporation, partnership, or association.

(f) The term "Health Officer" shall mean the State Health Officer or his authorized representative.

(g) The term "Sanitarian" shall mean any authorized representative of the State Health Officer engaged in sanitary inspection duties.

Section 2. Permits.

No person shall build or operate a poultry processing plant within the State of South Carolina who does not possess a permit from the State Health Officer. No permit to operate shall be issued until a sanitary inspection by a representative of the State Health Officer shows that the poultry processing plant complies with these rules and regulations. Application for such inspections shall be made to the local county health department. The permit shall be posted in a conspicuous place in the establishment. Any permit issued hereunder may be revoked by the Health Officer upon failure of the holder to comply with these rules and regulations.

Section 3. Sanitation Requirements for Poultry Processing Plants.

Item 1. Premises.—Must be properly located, well drained, kept clean and free from nuisances and contaminating surroundings.

Item 2. Floors.—Every poultry processing plant shall have sufficient floor area to accommodate all necessary operations. The floors of every poultry processing plant shall be of smooth concrete, or equal, and shall be sloped to drain effectively, and shall be kept clean and in good repair at all times. A sufficient number of properly located trapped floor drains shall be provided and shall be connected to a municipal sewer, or a sewage disposal system approved by the Health Officer.

Item 3. Walls and Ceilings.—Walls and ceilings shall be constructed of smooth, impervious material, and shall be maintained in good repair and painted as often as necessary with a light colored washable paint. The walls and ceilings shall be cleaned at

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sufficient and frequent intervals to prevent accumulation of dust, cobwebs, blood, feathers, and other contaminating substances.

Item 4. Doors and Windows.—All outside doors and windows of handling, killing, processing and storage rooms shall be effectively screened and all necessary insect control measures shall be carried out.

Item 5. Lighting.—All rooms shall be provided with adequate natural and/or artificial lighting.

Item 6. Ventilation.—All rooms shall be adequately ventilated by natural or mechanical means.

Item 7. Toilet Facilities.—Adequate and conveniently located toilet facilities shall be provided for employees, conforming with the Rules and Regulations of the State Board of Health. Toilet rooms shall not open directly into killing, processing, or storage rooms. The doors of toilet rooms shall be self-closing; toilet rooms shall be kept clean, in good repair, well-lighted and ventilated. Hand washing signs shall be posted in each toilet room.

Item 8. Water Supply.—Water under pressure shall be easily accessible to all parts of the processing plant. The supply shall be adequate, and of a safe, sanitary quality, and shall meet all requirements of the State Board of Health as to drinking water.

Item 9. Lavatory Facilities.—Adequate and convenient hand-washing facilities shall be provided, including warm water, soap and approved sanitary towels. All employees shall wash their hands before handling poultry or utensils, and after each visit to the toilet.

Item 10. Construction of Utensils and Equipment.—All equipment and utensils shall be of a type suitable for the purposes intended and so constructed as to facilitate efficient cleaning, maintenance, and inspection.

Item 11. Cleaning and Bactericidal Treatment of Equipment.—All utensils and equipment shall be thoroughly cleaned daily or more often if necessary and shall be kept clean and free from any form of contaminating material at all times. Hot water, steam, or other bactericidal agents approved by the Health Officer shall be used to disinfect equipment after thoroughly washing.

Item 12. Storage of Equipment.—All utensils and equipment shall be stored in a clean, dry place protected from insects, dust, or other contamination.

Item 13. Disposal of Wastes.—All poultry processing plants shall be provided with containers of such construction and dimensions for the reception of all garbage, refuse, offal, feathers, etc., and they shall be water-tight and of easily cleanable material, provided with suitable covers which must be kept properly adjusted at all times, so as to protect the contents from flies, insects, rodents and animals or vermin. Such wastes shall be removed daily and disposed of in a manner that will not create a nuisance. All containers shall be thoroughly washed immediately after emptying. The throwing of wastes, refuse or droppings upon the ground shall be prohibited. All liquid wastes, blood, etc., shall be disposed of through the public sewer or sewage disposal system or as approved by the Health Officer.

Item 14. Refrigeration and Cold Storage.—All refrigeration facilities including freezing units shall be adequate in capacity to provide proper refrigeration, freezing and storage of processed poultry. The refrigerators shall be easily cleanable and shall be kept clean and free of odors at all times. The waste water from refrigerators shall be properly disposed of.

Item 15. Wholesomeness of Food.—No part of a diseased, deceased or injured bird of any species shall be slaughtered in an approved plant. Such birds shall be removed from the premises at once and destroyed and shall not be stored in any refrigerator with processed poultry. Dressed poultry shall be handled in such manner as to prevent contamination. Ice used in connection with poultry processing shall be made from an approved potable water supply. Sufficient quantities of ice shall be available for proper handling of poultry. The handling and storage of ice shall be such as to prevent contamination.

Item 16. Storage and Display of Food.—The methods used in the processing and storage of poultry shall be such as to prevent contamination and deterioration. Processed poultry shall be protected from droplet infection and overhead leakage, and floors shall be protected from flooding or sewage backflow. Dogs, cats, and other animals shall be prohibited in poultry processing plants. Insects and rodents shall be controlled to prevent contamination of processed products, equipment and utensils.

Item 17. Cleanliness of Employees.—All employees shall wear clean suitable outer clothing and maintain cleanliness in dress and personal habits. No person who is affected

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with any communicable disease or is a carrier of such a disease shall be permitted to work in poultry processing plants.

Item 18. Miscellaneous.—Adequate storage facilities for packing supplies and materials shall be provided and separated from any and all processing rooms; adequate lockers and dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats and aprons shall be kept in containers provided for this purpose.

Section 4. Reinstatement of permit.

Any poultry processing plant, the permit of which has been suspended, may at any time make application for the reinstatement of the permit. Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision or provisions of these regulations have been conformed with, the Health Officer shall make a reinspection and thereafter as many additional inspections as he may deem necessary to assure himself that the applicant is again complying with the requirements, and in case the findings indicate compliance, shall reinstate the permit.

Railroads

(Filed Secretary of State's office February 17, 1944.)

Section 1. Persons not allowed to travel.

No person knowing or suspecting himself to be afflicted with plague, cholera, smallpox, typhus fever, or yellow fever, shall apply for, procure or accept transportation in any railway train, car, or other conveyance of a common carrier, nor shall any person apply for, procure, or accept such transportation for any minor, ward, patient, or other person under his charge if known or suspected to be so afflicted.

Section 2. Persons not accepted for travel.

Common carriers shall not accept for transportation in any railway train, car, or other conveyance, any person known by them to be afflicted with any of the diseases enumerated in section 1.

Section 3. Restricted travel.

Common carriers shall not accept for transportation on any railway train, car, or other conveyance, any person known by them to be afflicted with diphtheria, measles, scarlet fever (epidemic), cerebro-spinal meningitis, anterior poliomyelitis, mumps, whooping cough, influenza, pneumonia, epidemic encephalitis, septic sore throat, rubella, or chicken pox, or any person known to be a carrier of these diseases, unless such person is placed in a compartment separate from other passengers, is accompanied by a properly qualified nurse or other attendant, and unless such nurse or attendant shall agree to comply and does comply with the following regulations:

(a) Communication with the compartment within which the patient is traveling shall be restricted to the minimum consistent with the proper care and safety of the patient.

(b) All dishes and utensils used by the patient shall be placed in a 5 per cent. solution of carbolic acid or other fluid of equivalent disinfecting value for at least one hour after they have been used, and before being allowed to leave the compartment.

(c) All sputum and nasal discharges from the patient shall be received in gauze or paper, which shall be deposited in a paper bag or in a closed vessel and shall be destroyed by burning.

(d) Said nurse or attendant shall, after performing any service to the patient, at once cleanse the hands by washing them in a 2 per cent. solution of carbolic acid or other fluid of equivalent disinfecting value.

Section 4. Typhoid and dysentery.

Common carriers shall not accept for transportation on any railway train, car, or other conveyance, any person known by them to be afflicted with typhoid fever, paratyphoid fever, or dysentery, unless said person is placed in a compartment separate from the other passengers, is accompanied by a properly qualified nurse or other attendant, and unless said nurse or attendant shall agree to comply and does so comply with the following regulations:

(a) Communication with the compartment in which the patient is traveling shall be limited to the minimum consistent with the proper care and safety of the patient.

(b) All dishes and utensils used by the patient shall be placed in a 5 per cent. solution of carbolic acid or other fluid of equivalent disinfecting value for at least one hour after they have been used and before being allowed to leave the compartment.

(c) All urine and feces of the patient shall be received into a 5 per cent. solution of carbolic acid or other fluid of equivalent disinfecting value, placed in a covered vessel, thoroughly mixed, and allowed to stand for at least two hours after the last addition thereto before being emptied.

(d) A sheet of rubber or other impervious material shall be carried and shall be spread between the sheet and the mattress of any bed that may be used by the patient while in transit.

(e) Said nurse or attendant shall use all necessary precautions to prevent the access of flies to the patient or his discharges, and after performing any service to the patient, shall at once cleanse the hands by washing them in a 2 per cent. solution of carbolic acid or other fluid of equivalent disinfecting value.

(f) *Provided*, that if a person with typhoid or dysentery is presented at a railway station in ignorance of these regulations, and his transportation is necessary as a life-saving and safe guarding measure, an emergency may be declared and the patient may be carried a reasonable distance in a baggage car if accompanied by an attendant responsible for his care and removal: *provided, also*, that regulations (a), (b), (c), (d), and (e) of this section shall be complied with in so far as the circumstances will allow, and that all bedding, clothing, rags or cloths used by the patient shall be removed with him: *and provided further*, that any parts of the car which have become contaminated by any discharges of the patient shall be disinfected as soon as practicable, but not later than the end of the run, by washing with a 5 per cent. solution of carbolic acid or other fluid of equivalent disinfecting value.

Section 5. Restricted application for transportation.

No person knowing or suspecting himself to be afflicted with any of the diseases mentioned in sections 3 and 4, shall apply for, procure, or accept transportation in any railway train, car or other conveyance of a common carrier, nor shall any person apply for, procure, or accept such transportation for any minor, ward, patient, or other person under his charge, if known or suspected to be so afflicted, unless he shall have agreed to and made all necessary arrangements for complying and does so comply with the regulations set forth in said sections 3 and 4.

Section 6. Suspected cases.

If a conductor or other person in charge of a railway train, car, or other conveyance of a common carrier, or an agent or other person in charge of a railway station, shall have any reason to suspect that a passenger or a person contemplating passage is afflicted with any of the diseases enumerated in sections 1, 3 and 4, he shall notify the nearest health officer, or company physician, if the health officer is not available, by the quickest and most practicable means possible, of his suspicions, and said health officer or physician shall immediately proceed to the train, car, or other conveyance at the nearest possible point, or to the railway station, to determine whether such disease exists.

Section 7. Disposition.

If the health officer or physician as provided for in section 6 shall find any such person to be afflicted with any of the diseases enumerated in sections 1, 3 and 4, he shall remove such person from the station or conveyance, or shall isolate him and arrange for his removal at the nearest convenient point; shall treat the car or other conveyance as infected premises, allowing it to proceed to a convenient place for proper treatment if in his judgment consistent with the public welfare, in such case notifying the health officer in whose jurisdiction the place is located; and shall take such other measures as will protect the public health: *provided*, that if not prohibited in sections 1 and 2 of these regulations afflicted person so found may be allowed to continue his travel if arrangements are made to comply, and he does so comply, with the requirements of the section of these regulations pertaining to the disease with which he is afflicted.

Section 8. Leprosy.

Common carriers shall not accept for transportation, nor transport in any railway train, car, or other conveyance, any person known by them to be afflicted with leprosy, unless such person presents permits from the surgeon general of the United States public health service, or his accredited representative, and from the state department of health

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of the State from which and to which he is traveling, stating that such person may be received under such restrictions as will prevent the spread of the disease, and said restrictions shall be specified in each instance; and no person knowing or suspecting himself to be afflicted with leprosy, nor any person acting for him, shall apply for, procure, or accept transportation from any common carrier unless such permits have been received and are presented, and unless the person so afflicted agrees to comply and does so comply with the restrictions ordered. If any agent of a common carrier shall suspect that any person in a train, car, or other conveyance, or at a railway station, is afflicted with leprosy, he shall proceed as directed in the case of other suspected diseases in sections 6 and 7 of these regulations.

Section 9. Pulmonary tuberculosis.

Common carriers shall not accept for transportation any person known by them to be afflicted with pulmonary tuberculosis in a communicable stage, unless said person is provided with (a) a sputum cup made of impervious material and so constructed as to admit of being tightly closed when not in use, (b) a sufficient supply of gauze, papers, or similar articles of the proper size to cover mouth and nose while coughing or sneezing, (c) a heavy paper bag or other tight container for receiving the soiled gauze, paper, or similar article; and unless such person shall obligate himself to use the articles provided for in the manner intended and to destroy said articles provided for in the manner intended and to destroy said articles by burning or to disinfect them by immersing for at least one hour in a 5 per cent. solution of carbolic acid or other solution of equivalent disinfecting value; nor shall any person knowing himself to be so afflicted apply for, procure or accept transportation unless he shall have agreed to and made all necessary arrangements for complying and does so comply with the regulations as set forth in this section.

Section 10. Conveyances vacated by infected persons.

Immediately after vacation by a person having any of the diseases mentioned in sections 1, 3, 4 and 8, any berth, compartment, or stateroom should be closed and not again occupied until properly cleaned and disinfected, and all bedding, blankets and linen in any such place should be laundered or otherwise thoroughly cleaned and disinfected before being again used.

WATER AND ICE SUPPLIES.

Section 11. Water to be certified.

Water provided by common carriers for drinking or culinary purposes in railway trains, cars, or other conveyances, or in railway stations, shall be taken from supplies certified by the United States public health service as meeting the required standards of purity and safety prescribed by the interstate quarantine regulations of the United States.

Section 12. Ice.

Ice used for cooling water provided as in section 11 shall be clear natural ice, ice made from distilled water, or ice made from water certified as aforesaid; and before the ice is put into the water it shall be washed with water of known safety, and handled in such a manner as to prevent its becoming contaminated by the organisms of infectious diseases: *provided*, that the foregoing shall not apply to ice that does not come in contact with the water to be cooled.

Section 13. Water containers.

Water containers in newly constructed cars shall be so constructed that ice for cooling does not come in contact with the water to be cooled.

Section 14. Care of water containers.

All water containers where water and ice are put into the same compartment shall be thoroughly cleansed at least once in each week that they are in use. All water containers and water storage tanks shall be thoroughly drained and flushed at intervals of not more than one month.

Section 15. Filling water containers.

Portable hose or tubing that is used for filling drinking water containers, or car storage tanks from which such containers are filled, shall have smooth metal nozzles,

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which shall be protected from dirt and contamination; and before the free end or nozzle of said hose or tubing is put into the water container or car storage tank it shall be flushed and washed by a plentiful stream of water.

CLEANING AND DISINFECTING OF CARS.

Section 16. General.

All railway passenger cars or other public conveyances shall be kept in a reasonably clean and sanitary condition at all times when they are in service, to be insured by mechanical cleaning at terminals and lay-over points.

Section 17. Cleaning.

All day coaches, parlor cars, buffet cars, dining cars, and sleeping cars shall be brushed, swept and dusted at the end of each round trip, or at least once in each day they are in service, and shall be thoroughly cleaned at intervals of not more than seven days.

Section 18. Thorough cleaning.

Thorough cleaning shall consist of scrubbing the exposed floors with soap and water; similarly scrubbing the toilets and toilet-room floors; wiping down the woodwork with moist or oiled cloths; thorough dusting of upholstery and carpets by beating and brushing; or by means of the vacuum process or compressed air; washing or otherwise cleaning windows; and the thorough airing of the car and its contents.

Section 19. Odors in cars.

When offensive odors appear in toilets or other parts of the car which are not obliterated and removed by cleaning as in section 18, said toilets or other parts of the car shall be treated with a 2 per cent solution of formaldehyde or other odor-destroying substance.

Section 20. Vermin in cars.

Whenever a car is known to have become infested with bedbugs, lice, fleas, or mosquitoes, such car shall be so treated as to effectively destroy such insects, and it shall not be used in service until such treatment has been given.

CARS IN SERVICE.

Section 21. Cleaning.

The cleaning of cars while occupied shall be limited to the minimum consistent with the maintenance of cleanly conditions, and shall be carried out so as to cause the least possible raising of dust or other annoyance to passengers.

Section 22. Sweeping.

Dry sweeping of the interior of a car in transit with an ordinary broom is prohibited.

Section 23. Dusting.

Dry dusting of the interior of a car in transit is prohibited.

Section 24. Brushing.

The brushing of passengers clothing in the body of the car in transit is prohibited.

Section 25. Drinking cups.

Individual drinking cups in sufficient number shall be supplied in all cars, and the use of common drinking cups is prohibited.

Section 26. Towels.

The supplying of roller towels for common use in cars is prohibited.

Section 27. Comb and brush.

The supplying of combs and brushes for common use in cars is prohibited.

Section 28. Spitting.

Spitting on the floors, carpets, walls or other parts of cars by passengers or other occupants of them is prohibited.

Section 29. Cuspidors.

An adequate supply of cuspidors shall be provided in all sleeping cars, smoking cars,

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and smoking compartments of cars while in service. Said cuspidors shall be cleaned at the end of each trip, and oftener if their condition requires.

Section 30. Brushing of teeth.

Spitting into, blowing the nose into, or brushing the teeth over wash basins in car is prohibited. Separate basis for brushing the teeth shall be provided in the washrooms of sleeping cars.

Section 31. Drinking water and ice.

Drinking water and ice on railways cars shall be supplied in accordance with the conditions set forth in sections 11, 12, 13, 14 and 15 of these regulations.

Section 32. Ventilation and heating.

All cars when in service shall be provided with an adequate supply of fresh air, and in cold weather shall be heated so as to maintain comfort. When artificial heat is necessary, the temperature should not exceed 70° F., and in sleeping cars at night after passengers have retired, it should not exceed 60° F.

Section 33. Toilets in cars.

A proper toilet room and lavatory shall be provided in all railway passenger cars for the use of their occupants. Such toilet shall be supplied with toilet paper, soap and free or pay clean towels, and shall be kept in a clean and sanitary condition: *provided*, that cars used exclusively in suburban service are not required to be so equipped.

Section 34. Toilets to be locked.

The toilet rooms in all railway cars shall be locked or otherwise protected from use while trains are standing at stations, passing through cities, or passing over waterheads draining into reservoir furnishing domestic water supplies, unless adequate watertight containers are securely placed under the discharge pipe. The state health authority having jurisdiction shall designate the area of water-sheds that may be affected by pollution from railroads and shall notify the managing officers of railroads as to the points between which all toilets shall be locked.

Section 35. Lavatories in dining cars.

A lavatory shall be provided in all dining cars for the use of dining car employees, and the same shall be supplied with soap and clean towels, and shall be kept in a clean and sanitary condition. Such lavatory shall have no direct connection with the kitchen, pantry, or other places where food is prepared. The word "dining car" as used in these regulations shall be held to include all cars in which food is prepared and served.

Section 36. Dining cars to be screened.

Dining cars shall be screened against the entrance of flies and other insects, and it shall be the duty of dining car employees to destroy flies or other insects that may gain entrance.

Section 37. Dining car employees to cleanse hands.

Dining car employees shall thoroughly cleanse their hands by washing with soap and water after using a toilet or urinal, and immediately before beginning service.

Section 38. Care of tableware.

All cooking, table and kitchen utensils, drinking glasses and crockery used in the preparation or serving of food or drink in dining cars shall be thoroughly washed in boiling water and suitable cleansing material after each time they are used.

Section 39. Food containers.

Refrigerators, food boxes, or other receptacles for the storing of fresh food in dining and buffet cars shall be emptied and thoroughly washed with soap and hot water at least once in each seven days that they are in use.

Section 40. Food and milk.

No spoiled or tainted food, whether cooked or uncooked, shall be served in any dining car; and no milk or milk products shall be served unless the milk has been pasteurized or boiled.

Section 41. Garbage.

Garbage cans in sufficient number and with suitable tight-fitting covers shall be pro-

vided in dining cars to care for all refuse food and other wastes, and such wastes shall not be thrown from the car along the right of way within the limits of cities, towns or villages, or within drainage areas furnishing domestic water supplies.

Section 42. Dining car inspection.

The person in charge of the dining car shall be responsible for compliance with all dining car regulations, and he shall make an inspection of the car each day for the purpose of maintaining a rigorous cleanliness in all portions thereof.

Section 43. Examination of food handlers.

No person shall serve as a cook, waiter, or in any other capacity in the preparation or serving of food in a dining car who is known or suspected to have any dangerous communicable disease. All persons employed for such service shall undergo a physical examination by a competent physician before being assigned to service, and before returning to work after any disabling illness, and at such other times during their service as may be necessary to determine their freedom from such diseases, and shall be immediately relieved from service if found to be so afflicted.

RAILWAY STATIONS.

Section 44. General.

All railway stations, including their waiting rooms, lunch rooms, restaurants, wash rooms, and toilets, shall be kept in a clean and sanitary condition at all times, to be insured by mechanical cleaning at regular intervals.

Section 45. Cleaning.

All waiting rooms and other rooms used by the public shall be swept and dusted daily; and at intervals of not more than seven days the floors shall be scrubbed with soap and water, and the seats, benches, counters and other woodwork shall be similarly scrubbed, or shall be rubbed down with a cloth moistened with oil.

Section 46. Sweeping.

If sweeping is done while rooms are occupied or open to occupancy by patrons, the floor shall be first sprinkled with wet sawdust or other dust-absorbing material.

Section 47. Dusting.

If dusting is done while rooms are occupied or open to occupancy by patrons, the floor shall be first sprinkled with wet sawdust or other dust-absorbing material.

Section 47. Dusting.

If dusting is done while rooms are occupied or open to occupancy by patrons, it shall be done only with cloths moistened with water, oil, or other dust-absorbing material.

Section 48. Spitting.

Spitting on the floors, walls, seats or platforms of railway stations is prohibited.

Section 49. Cuspidors.

In all waiting rooms where smoking is permitted, an adequate supply of cuspidors shall be provided; such cuspidors shall be cleaned daily, or oftener if their condition requires.

Section 50. Common cups.

Individual drinking cups in sufficient number shall be supplied in all stations, and the use of common drinking cups is prohibited.

Section 51. Common towels.

The supplying of roller towels or other towels for common use in railway stations is prohibited.

Section 52. Combs and brushes.

The supplying of combs and brushes for common use in railway stations is prohibited.

Section 53. Toilet facilities.

All railway stations where tickets are sold shall provide adequate toilet facilities of a design approved by the state department of health, for the use of patrons and employees, and there shall be separate toilets for each of the two sexes.

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Section 54. Station toilets.

If a railway station is located within 300 feet of a public sewer, water flushing toilets shall be installed and permanently connected with such sewer, and a wash basin or basins shall be located near the toilet and similarly connected; and such toilets and lavatories shall be kept in repair and in good working order at all times.

Section 55. Care of toilets.

All toilets installed as set forth in section 54 shall be cleaned daily by scrubbing the floors, bowls and seats with soap and water.

Section 56. Odors in toilets.

When offensive odors appear in toilets which are not obliterated and removed by cleaning as in section 55, said toilets shall be treated with a 2 per cent. solution of formaldehyde or other odor-destroying substance.

Section 57. Toilet supplies.

Toilets and wash rooms installed as set forth in section 54 shall be constantly furnished with an adequate supply of toilet paper, soap and free or pay clean towels.

Section 58. Privies.

If no sewer connection is available as set forth in section 54, a sanitary privy of a design approved by the state department of health shall be maintained within a reasonable distance from the station. Such privy shall be adequately protected against the entrance of flies, shall be kept supplied with toilet paper, the seats shall be kept clean, and the vaults shall be treated with sodium hydrate or other approved disinfectant at least once in each week and shall be cleaned out and emptied at such intervals as will avoid the development of a nuisance.

Section 59. Drinking water and ice.

Drinking water and ice in railway stations shall be supplied in accordance with sections 11, 12, 13, 14, and 15 of these regulations.

Section 60. Water not usable for drinking.

If water which does not conform to the standards set forth in section 11 of these regulations is available at any tap or hydrant or in a railway station, a notice shall be maintained on each such tap or hydrant which shall state in prominent letters, "Not fit for drinking."

Section 61. Drinking fountains.

If drinking fountains of the bubbling type are provided in any railway station, they shall be so made that the drinking is from a free jet projected at an angle to the vertical, and not from a jet that is projected vertically or that flows through a filled cup or bowl.

Section 62. Refuse cans.

At all railway stations where there is an agent, there shall be provided and maintained an adequate supply of open or automatically closing receptacles for the disposition of refuse and rubbish, and such receptacle shall be emptied daily and kept reasonably clean and free from odor.

Section 63. Cisterns, cesspools, etc.

All cisterns, water-storage tanks and cesspools in or about railway stations shall be adequately screened against the entrance of mosquitoes, and all collections of surface water on station property shall be drained or oiled during the season of mosquito flight, to prevent the breeding of mosquitoes.

Section 64. Restaurants to be screened.

All restaurant and lunch rooms, or other places where food is prepared or served in a railway station, shall have doors, and windows adequately screened against the entrance of flies during the season of flight of these insects; and all food on display or storage racks shall be adequately covered.

Section 65. Lavatories for restaurants.

A lavatory of easy and convenient access shall be provided for the use of employees in every restaurant or lunch room in any railway station, and it shall be provided with an adequate supply of water, soap and clean towels.

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Section 66. Restaurant employees.

Restaurant employees who are engaged in the preparing or serving of food, shall thoroughly cleanse their hands by washing with soap and water after using a toilet or urinal, and immediately before beginning service.

Section 67. Kitchen and table utensils.

All cooking, table and kitchen utensils, drinking glasses and crockery used in the preparation or serving of food or drink in railway restaurants or lunch rooms shall be thoroughly washed in boiling water and suitable cleansing material after each time they are used.

Section 68. —Food containers.

Refrigerators, food boxes, or other receptacles for the storing of fresh food in railway restaurants or lunch rooms shall be emptied and thoroughly washed with soap and hot water at least once in each seven days that they are in use.

Section 69.

Garbage cans in sufficient number, and with suitable tightfitting covers, shall be provided in all restaurants and lunch rooms to care for all refuse food and other wastes; and such cans shall be emptied daily in an approved place and kept in a clean and sanitary condition.

Section 70. Restaurant inspection.

The manager, chef or other person in charge of any railway restaurant or lunch room shall be responsible for compliance with all regulations pertaining thereto, and he shall make an inspection of the premises daily for the purpose of maintaining a rigorous cleanliness in all parts thereof.

Section 71. Station inspection.

The agent, manager or other persons in charge of any railway station shall be responsible for compliance with all regulations pertaining thereto, and he shall make, or have made by a responsible person reporting to him, frequent inspections of the premises for the purpose of maintaining a rigorous compliance with all such regulations.

Section 72. Examination of food handlers.

No person shall serve as a cook, waiter, or in any other capacity in the preparation or serving of food in a railway restaurant or lunch room who is known or suspected to have any dangerous communicable disease. All persons employed for such service shall undergo a physical examination by a competent physician before being assigned to service, and before returning to work after any disabling illness, and at such other times during their service as may be necessary to determine their freedom from such diseases, and shall be immediately relieved from service if found to be so afflicted.

CONSTRUCTION CAMPS.

Section 73. Definition.

For the purpose of these regulations railway construction camps shall be considered to include all camps and similar places of temporary abode, including those on wheels, established by or for the care of working forces engaged in the construction, repair, or alterations of railway properties or parts thereof: *provided*, that camps which are occupied by less than five people, or camps which are established to meet emergency conditions and are not occupied longer than five days, shall not be included, except that section 90 of these regulations shall apply to them.

Section 74. General.

All camps shall be so located and so maintained as to be conducive to the health of their occupants, and not to endanger the health of the public; and all tents, houses, stables, or other structures therein shall be kept in a reasonably clean and sanitary condition at all times.

Section 75. Location.

Camps, except those on wheels, should be located on high, well-drained ground; any natural sink holes, pools or other surface collections of water in the immediate vicinity should be drained and filled when the camp is first established; and all such water not

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subject to complete drainage should have the surface oiled at intervals of not more than seven days during the season of mosquito flight.

Section 76. Arrangement.

The general scheme of relations of the structures of a camp should be as follows: the kitchen should be located at one end of the camp; next to this should be the eating quarters, then the sleeping quarters, then the toilets for the men, then the stable, thus bringing the kitchen and the stable at opposite ends of the camp, which should be as far apart as is consistent with the natural topography and the necessity for convenient access.

Section 77. Water supplies.

All water supplies for camps shall be properly chlorinated, unless obtained from a source which has been approved by the state department of health.

Section 78. Water containers.

All drinking water containers in camps shall be securely closed and so arranged that water can be drawn only from a tap, and said containers shall be kept clean and free from contamination.

Section 79. Garbage and refuse.

All garbage, kitchen waters and other rubbish in camps shall be deposited in suitable covered receptacles, the contents of which shall be emptied and burned each day; and manure from the stables shall be likewise collected and burned each day, or disposed of in some other manner approved by the state department of health.

Section 80. Scavenger.

In all camps where there are 100 men or more, there shall be one employee whose duty shall be to act as scavenger and garbage collector.

Section 81. Toilets.

Every camp shall have an adequate number of latrines and urinals, so constructed and maintained as to prevent fly breeding and the pollution of water, and the use of such latrines and urinals by the inhabitants of the camp shall be made obligatory. Latrines and urinals may consist of deep trenches covered with houses adequately screened against flies, or of any other type approved by the state department of health. They shall not be located within less than 200 feet of any spring, stream, lake, or reservoir forming part of a public water supply.

Section 82. Washing facilities.

There shall be provided in all camps adequate washing facilities for the use of occupants thereof.

Section 83. Screening.

The kitchen, eating houses and bunk houses of all camps shall be effectively screened against the entrance of flies and mosquitoes during the season of flight of these insects.

Section 84. Care of tableware.

All cooking, table and kitchen utensils, drinking glasses and crockery used in the preparation or serving of food or drink in camps shall be thoroughly washed in boiling water and suitable cleansing material after each time they are used.

Section 85. Food containers.

Refrigerators, food boxes, or other receptacles for the storing of fresh food in camps shall be emptied and thoroughly washed with soap and hot water at least once in each seven days that they are in use.

Section 86. Food and milk.

No spoiled nor tainted food, whether cooked or uncooked, shall be served in any camp; and no milk nor milk products shall be served unless the milk has been pasteurized or boiled.

Section 87. Examination of food handlers.

No person shall be employed as a cook, waiter or in any other capacity in the preparation or serving of food in any camp who is known or suspected to have a dangerous communicable disease. All persons employed for such service shall undergo a physical examination by a competent physician before being assigned to service, and before returning

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to work after any disabling illness, and at such other times during their service as may be necessary to determine their freedom from such diseases, and shall be immediately relieved from service if found to be so afflicted.

Section 88. Sick persons.

When an occupant of a camp becomes sick with a dangerous communicable disease, he shall be immediately isolated, and the health officer within whose jurisdiction the camp is located shall be immediately notified.

Section 89. Vermin.

It shall be the duty of some one appointed as caretaker of the camp to make regular weekly inspections of the occupants and premises in order to ascertain the presence of lice or other vermin. Persons found to be infested shall be required to bathe, and their clothing shall be boiled; and the premises found to be infested shall be fumigated with sulphur and treated by some other effective vermin-destroying method.

Section 90. Abandoned camps.

When any camp is to be abandoned, all garbage, rubbish, and manure shall be collected and burned, the latrine trenches filled and the ground and buildings shall be left in a clean and sanitary condition.

Section 91. Duty to enforce regulations.

It shall be the duty of the superintendent, foreman, or other person in charge of a camp to see that all regulations pertaining thereto are faithfully complied with.

Section 92.

All trains operating in South Carolina are required to place in conspicuous position at both interior ends of each car, large typed cards calling attention to sections 22, 23, and 33, printing said sections in full on said cards.

Rendering Plants for Inedibles.

(Filed Secretary State's office October 14, 1949.)

1. Definition.

A rendering plant for inedibles is hereby defined as a plant or establishment where waste materials, whether from garbage, meat packing plants, markets or condemned carcasses or parts thereof or fallen and/or dead animals, are processed or rendered into another form or destroyed, for commercial use or otherwise. These rules and regulations shall not apply to the plants or establishments of packing plants for edible meats; but rendering plants or equipments on the premises of such plants for edible meat shall be governed by the rules and regulations applying to such packing plants for edible meat.

2. Plant Sanitation.

(a) All yards, driveways, alleys and pens connected with rendering plants shall be kept clean and properly drained at all times.

(b) Accumulated manure shall be removed at least every fourth day.

(c) All floors of buildings in which the rendering process is conducted shall be of concrete or similar impervious material, so constructed as to drain freely into traps connected with a satisfactory drain. Walls shall be kept clean at all times.

(d) Properly equipped, sanitary dressing rooms and toilet rooms with natural light and ventilation, and conveniently located, shall be provided for employees.

(e) Ample, sanitary lavatory and toilet facilities, including hot and cold water, soap and towels, to insure the cleanliness of all persons working in rendering plants shall be provided. Where no connections from toilets can be made to a sanitary sewer, a septic tank approved by the State Board of Health shall be installed.

(f) An adequate supply of water shall be provided, delivered under pressure to all parts of the plant; and adequate hot water shall be piped to necessary places in the plant. An adequate supply of safe, potable water shall be provided for drinking purposes.

(g) All buildings on the premises shall be rat-proofed.

(h) No dogs or cats shall be allowed around any rendering plant.

(i) Floors and walls of the plant killing and processing rooms shall be washed at the end of each day's processing or killing, and the floor, trucks, and other surfaces shall be washed as often as necessary to keep them in a clean condition.

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(j) Knives, saws, cleavers and other utensils shall be sterilized after each day's use, and at other times when necessary.

(k) No person shall commit any nuisance whatsoever in the plant or pens or within 150 feet thereof; and all industrial or trade wastes and sewage shall be disposed of in a manner approved by the State Board of Health.

(l) Adequate fly control methods shall be employed continuously, including dusting and/or spraying with approved insecticides and elimination of fly breeding places on the premises.

3. Transportation of animals, waste, garbage, fats, bones, carcasses or parts thereof, from and to rendering plants.

(a) All materials shall be transported in a sanitary manner.

(b) All vehicles shall be thoroughly washed, cleaned and sterilized by steam or chemical bactericidal agent after each day's operation, or oftener if necessary to prevent odors and unsanitary conditions.

(c) All vehicles for the transportation of such materials shall be so constructed as to prevent leakage of blood or drippings.

(d) All vehicles shall be covered so as to completely cover the body of the vehicle and its contents; and adequate measures for the prevention or suppression of odors shall be practiced.

(e) Adequate fly control measures, sufficient to prevent swarming of flies on materials while in transit shall be practiced.

(f) No dead animal or fowl shall be taken up for transportation to rendering plants after having lain exposed for more than two (2) days, or when the carcass has reached an advanced state of decomposition; but such carcasses shall be burned or buried immediately by the owner, or the owner or tenant on whose premises they are found, in accordance with section 32-557 of the Code of Laws of South Carolina, 1952. Violation of this provision shall be a misdemeanor and punishable as such.

October 12, 1949

Schools.

SANITATION OF SCHOOLS.

(Filed Secretary of State's office April 10, 1952.)

Section 1. Definitions:

(a) The term "School" as used in these regulations shall include all elementary and high schools under the jurisdiction of the State Board of Education.

(b) The term "School building" as used in these regulations shall include all buildings operated for the use of the students, teachers and patrons of the school.

(c) The term "Classroom" as used in these regulations shall include all rooms in which classes are held or are used for studying.

(d) The term "Health Officer" shall mean the health authority of the cities and/or counties, and/or the state, or his authorized representative.

Section 2. Plans approved by State Educational Finance Commission:

No school board of trustees shall build any new buildings, or make any additions or major changes in a school building; or enter into contract for construction of a new building, or additions or major changes to a school building, until complete plans for such work have been submitted to and received the written approval of the State Educational Finance Commission, and thereafter such plans must be substantially adhered to unless deviations are submitted to and receive the written approval of the State Educational Finance Commission. All plans and construction shall comply with the laws of the state and with the rules and regulations of the State Board of Education, State Educational Finance Commission, the State Board of Health, and the State Insurance Commissioner.

If section 4 of these regulations are violated to the extent as to be dangerous to the health of the school children as determined by the Health Officer, the unit will be closed until necessary corrections are made.

Section 3. Sanitation requirements for schools:

Item 1. *Floors*: All floors shall be of easily cleanable construction. All floors shall be cleaned daily by dustless methods.

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Public Health Reason: Properly constructed floors which are in good repair can be more easily kept clean than improperly constructed floors. Clean floors are conducive to better sanitary methods. Dry sweeping forces dust into the air which is often laden with bacteria. This dust will settle on desks, etc.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. The floors are smooth and free of open cracks.
2. All floors are cleaned daily by dustless methods.

Item 2. Walls and Ceilings: Walls and ceilings shall be of such construction as to permit easy cleaning, and shall be painted or finished in an approved manner.

All paints used for classroom walls and ceilings shall be flat or non-glossy finish.

All walls and ceilings shall be kept clean and in good repair.

Public Health Reason: Walls and ceilings are agents of reflection of the light. Without proper reflection, inadequate light or glare and improper diffusion of light is the result. Colors and finish of paints control the reflection. If the walls are not kept clean and in good repair, the reflection value is lost.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All classroom ceilings are smooth and finished with flat white paint. At no time shall the ceiling be allowed to develop a reflector value of less than 75%.

2. Upper walls from the ceiling line to the window sills in classrooms are finished with a paint of 50 to 60 per cent reflection factor. The wainscot or dado should be finished with a minimum 40% reflector paint.

3. All wall and ceiling paint in classrooms is a flat or non-glossy finish.

4. All walls and ceilings are clean.

5. All walls and ceilings are in good repair.

Item 3. Light and Ventilation: Adequate natural or artificial light shall be provided. Classrooms and study rooms shall have windows which are adequate to provide natural light and ventilation in accordance with current recommendations of the National Council on Schoolhouse Construction. Artificial light shall be provided in such manner as to avoid glare and reflect light on the working surface for the child in accordance with current recommendations of the National Council on Schoolhouse Construction. Sufficient air and floor space to meet all the needs of health shall be provided each pupil.

Adequate ventilation must be provided for all parts of every school building, and there shall be no room, corridor or hall without an outside window or door. All windows shall be so constructed that adequate ventilation may be provided. Window deflectors shall be installed to promote more adequate circulation and prohibit direct drafts at the level of the seated child. Window and other glass surfaces shall be kept clean at all times and any broken panes or blocks shall be replaced.

All shades, except those for audio-visual aid programs, shall be light colored, translucent, and adjustable for proper light.

Public Health Reason: "Eyestrain or eye-fatigue sometimes resulting in irritability, headaches and other disorders, may be due to inadequate or glaring illumination. Good lighting is, therefore, an important factor in preventing eye-fatigue and in developing desirable physiological and psychological results." (From American Recommended Practice of School Lighting.)

Adequate ventilation is necessary to avoid sluggishness, headaches, inattention and to promote alertness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All classrooms and study rooms have a minimum of 20 ft. candles of light on all work surfaces.

2. The window area of classrooms is at least 20 per cent of the floor area and current recommendations of the National Council on Schoolhouse Construction concerning natural and artificial lighting are complied with.

3. All classrooms have not less than 18 sq. ft. floor space per pupil.

4. All classrooms have not less than 200 cu. ft. air space per pupil.

5. All rooms, corridors and halls have a window or door to the outside.

6. All windows are so constructed that adequate ventilation may be provided.

7. Proper window deflectors are installed and maintained.

8. Window glass surface is kept clean at all times and any blocks or panes broken are replaced without delay.

9. All shades, except those used for audio-visual aid programs, are light colored and translucent.

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10. All shades are hung in the center of the windows, either a double roller shade, or two shades to operate one up and the other down.

Item 4. *Classroom Equipment*: Each student shall be furnished with an approved desk or table so designed and arranged to insure maximum comfort and correct light. Chalkboards shall be of a good finish.

Public Health Reason: The desk or table is the most important article of school furniture. The child spends so much time sitting and if the desk or table is not proper for the child and is not arranged properly, they promote defects of eyesight, injurious effects as to posture, and wrong habits of carriage which are borne through life. If the children have difficulty reading from the blackboards, eyesight suffers.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Each student is furnished an approved desk or table and chair.

2. Desks or tables are so arranged as to give correct light on the desk top with the pupil seated.

3. Chalkboards are of a good finish.

Item 5. *Heating*: Adequate heating facilities shall be furnished to maintain correct temperature in all parts of classrooms and auditoriums. There shall be correct methods for maintaining correct humidity.

Public Health Reason: A student who is too cold cannot do proper work and is in danger of sickness from exposure. A student who is too warm will not be as alert and will become drowsy easily. Improper humidity also causes drowsiness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Adequate heating facilities are furnished to maintain a temperature of between 65°F-70°F in all parts of classrooms and auditoriums.

2. Thermometers are hung in classrooms and at points in the auditorium.

3. Water pans or other recommended methods of maintaining correct humidity are furnished and maintained.

Item 6. *Toilet Facilities*: At least two toilet rooms with adequate fixtures must be provided, well separated, well lighted and ventilated. Floors shall be of easily cleanable construction. In all schoolhouses hereafter constructed, if electrification is available, all toilets shall be of the flush type, with disposal into municipal sewage system or into septic tank approved by the State Health Officer. Where water and sewerage are available the toilet rooms shall be equipped with approved sanitary plumbing. If water and sewerage are not available the toilet accommodations shall be built with the approval of the State Board of Health.

All toilet rooms and fixtures must be kept clean and in good repair at all times, and toilet paper shall be supplied.

Public Health Reason: The need of clean, adequate, correctly constructed toilets is obvious.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Not less than two toilet rooms have been provided.

2. They are well lighted and ventilated to outside air.

3. Floors are of easily cleanable construction with floor drains provided in all new construction.

4. In all schoolhouses hereafter constructed, if electrification is available, all toilets shall be of the flush type, with disposal into municipal sewage system or into septic tank approved by the State Health Officer.

5. All plumbing complies with standard plumbing practices and health regulations.

6. All privies are constructed in accordance with State Board of Health plans.

7. Adequate toilet facilities are provided on the following basis: One urinal is provided for every 30 boys enrolled in addition to stool requirements.

Elementary Schools: 1 stool for every 30 girls.

1 stool for every 60 boys.

High Schools: 1 stool for every 45 girls.

1 stool for every 90 boys.

If grades 1 through 12 are housed in the same plant the schedule for elementary pupils shall prevail.

8. All toilet rooms and fixtures are kept clean and in good repair at all times.

9. In all schoolhouses hereafter constructed, rehabilitated, modernized or to which additions are made, toilet seats are of open front type and toilet bowls are of elongated front design.

10. Toilet paper is supplied for each unit.

Item 7. *Water Supply*: There shall be an adequate supply of water on the school prop-

erty that is from a protected source, which is of safe, sanitary quality, and meets all the requirements of the State Board of Health as to drinking water.

In all schoolhouses hereafter constructed, and where electrification is available, drinking fountains shall be furnished at the rate of not less than one to every 75 pupils.

Where drinking fountains are furnished, they shall be so made that the drinking is from a free jet projected at an angle to the vertical, and has a guard to prevent the mouth being placed directly against the orifice. There shall be no possibility of the orifice becoming submerged. The use of the common drinking cup is forbidden.

Public Health Reason: The drinking water shall be of a safe, sanitary quality in order to be suitable for drinking. It shall be adequate so that cleaning operations will be thorough and plumbing will operate satisfactorily. It must be accessible to encourage its use in cleaning operations.

Safe drinking methods must be employed to avoid contamination of the water from its safe source to the child's mouth.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. There is an adequate supply of water for all needs.
2. The water is from a protected source as approved by the State Board of Health.
3. The water supply is approved as safe by the State Board of Health.
4. The supply is on school property.
5. In all schoolhouses hereafter constructed, and where electrification is available, drinking fountains shall be furnished at a rate of not less than one to every 75 pupils.
6. All fountains are of an approved type.
7. At least one fountain is provided on each floor.
8. No common drinking cups are in use.

Item 8. *Lavatory Facilities:* Adequate handwashing lavatories or basins, conveniently located, shall be supplied. All lavatories are kept clean and in good repair. Approved sanitary towels and soap shall be provided, conveniently located to all lavatories or basins.

Public Health Reason: The use of adequate washing facilities and sanitary towels are essential to the proper training and cleanliness of school children. The evil of the common towel is obvious.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Adequate handwashing lavatories or basins are furnished on the basis of one to each fifty pupils enrolled. In the case of new schools hereafter constructed, they shall be supplied on a basis of not less than one to each classroom, and at least one such lavatory shall be in each toilet room.
2. Handwashing facilities are conveniently located.
3. Handwashing facilities are kept clean.
4. Approved sanitary towels and soap are provided, conveniently located to all lavatories or basins.

Item 9. *Disposal of Wastes:* All liquid wastes shall go into a public sewer, or be disposed of by a method approved by the State Board of Health. All garbage and refuse shall be placed in suitable receptacles and disposed of properly.

Public Health Reason: The proper disposal of wastes prevents the creation of a nuisance or a possible public health menace.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Liquid waste goes into public sewer or be disposed of by the State Board of Health.
2. There is no connection or back siphonage into water supply or sinks.
3. There shall be no connection from an unsafe supply to a safe water supply.
4. Garbage is stored in tight, approved type, washable receptacles, covered pending removal.
5. Waste paper metal containers shall be supplied to all classrooms.
6. Ashes shall be placed in only metal containers.

Item 10. *Fire Protection:* One-story buildings hereafter constructed, shall be of not less than one-hour fire-resistive construction throughout except that boiler rooms, heating rooms, and combustible storage rooms shall be of three-hour fire-resistive construction. Buildings hereafter constructed of more than one story in height shall be of incombustible materials. All doors shall be so hinged as to prevent a fire trap in case of panic. Adequate fire escapes and exits must be provided. There shall be sufficient corridors of adequate width to allow an unhampered exit. Every school shall provide each floor with one or more fire extinguishers of a type approved by the national board of fire underwriters, which shall be kept in good working order at all times, with plain instructions thereon. Fire drills are held at least once a month.

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Public Health Reason: Fire protection is necessary to protect lives and property.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. One-story buildings hereafter constructed, shall be of not less than one-hour fire-resistive construction throughout except that boiler rooms, heating rooms, and combustible storage rooms shall be of three-hour fire-resistive construction. Buildings hereafter constructed of more than one story in height shall be of incombustible materials.

2. All exit-doors from corridors, halls, stairways, auditoriums, assembly rooms, study halls, libraries, laboratories, workshops, classrooms, toilets, or other rooms for the accommodation of more than five persons shall open outwardly and be secured, if at all, against ingress only.

3. Every school building more than one story above the ground shall have at least two stairways from the top floor to the ground. No stairway shall serve more than four classrooms, nor more than two hundred and fifty persons in study halls, assembly halls, or auditoriums, nor shall the distance from the door of any such room to the nearest stairway be more than one hundred feet.

4. Every school building of more than one classroom shall have at least two exits, and in no case shall the distance from the door of a classroom, laboratory, study hall, assembly room, or auditorium be more than one hundred feet from the nearest exit. Every auditorium or assembly room shall have at least one exit from the stage, and at least two independent exits from each floor, and in no case shall one exit serve more than two hundred and fifty people. Every exit shall be easily accessible without obstruction to all the persons that it is intended to serve.

5. Every school building hereafter constructed of more than three classrooms shall have one or more corridors not less than eight and one half feet wide, and in no case shall it be necessary to pass from one room through another to reach an exit.

6. At least one fire extinguisher of a type approved by the national board of fire underwriters shall be installed at a convenient location on the wall of the corridor of the school. In case the school is less than four classrooms, and has no corridor, the most convenient location for all rooms will be used. At least one of the above type extinguishers shall be supplied for every 100 lineal feet corridor. These extinguishers shall be recharged as required by the manufacturer and dated at the time of recharge.

7. Fire drills are held in public schools at least monthly.

Item 11. *Cleanliness of School Building, Premises and Equipment:* All parts of the school building premises and equipment shall be kept clean and neat at all times.

Public Health Reason: Sanitation is dependent on cleanliness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Basements are kept free of rubbish and neat and clean.

2. Halls, closets and storerooms are kept neat and clean.

3. All school buses, any shops, rooms, or parts of the school buildings or property not mentioned elsewhere in these items shall be kept neat and clean.

Item 12. *Miscellaneous:* All School buildings hereafter constructed shall be located on high ground with good natural drainage. All existing school grounds shall be graded and drained as well as local conditions permit. All school buildings shall be kept in good repair. Adequate planned playground area shall be provided. Playgrounds shall be properly supervised.

Public Health Reason: The terrain of the school ground is important so that water can be drained away from the school buildings and grounds, avoiding wet feet, mosquito breeding, etc. A school building in good repair can be more easily kept clean and continue to meet the requirements for heat and ventilation. Play is very necessary for the physical welfare of the child, but needs supervision to help avoid accidents.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. School buildings hereafter constructed are located on high ground with good natural drainage.

2. Existing school grounds are graded and drained as well as local conditions permit.

3. All school building exteriors are in good repair.

4. Adequate playground area is provided. A minimum of 30 sq. ft. for each pupil is considered necessary to meet the demands of play.

5. Playgrounds shall be supervised by at least one teacher to every 100 pupils during recess hours.

Section 4. Enforcement interpretation:

These regulations are issued under the authority of the Code of Laws of 1942 and

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subsequent legislation. They shall be enforced by the Health Officer in accordance with interpretations and reasons which shall be provided by the State Board of Health. Superintendents and Principals are responsible for general sanitary maintenance. School Trustees are responsible for construction, equipment, and maintenance of building and school property.

Section 5. Penalties:

The penalties for violation of these rules and regulations are contained in § 32-17 S. C. Code 1952.

SANITATION SCHOOL LUNCH ROOMS

(Filed Secretary of State's office September 17, 1948.)

Section 1.

Item 1. *Floors:* The floors of all rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

Public Health Reason: Properly constructed floors which are in good repair can be more easily kept clean than improperly constructed floors. Kitchen floors having an impervious surface can be cleaned more easily than floors constructed of a pervious or easily disintegrated material, will not absorb organic matter, and are, therefore, more likely to be kept clean and free of odors. Clean floors are conducive to clean food-handling methods.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. The floors of all rooms in which food or drink is stored, prepared, or served are of such construction as to be easily cleaned, are smooth, and are in good repair. Floors may be of concrete, terrazzo, tile, etc., or wood covered with linoleum, or tight wood. Wooden floors containing cracks, holes, or broken or poorly fitting planks, or which otherwise fail to be tight, do not comply with this item. If floor drains are used they shall be provided with proper traps and so constructed as to minimize clogging, and the floor should be graded to drain.

2. All floors are kept clean and free from litter during the hours of preparing, cooking, and serving food. Dustless methods of floor cleaning shall be used, or dust-arresting sweeping compounds and push-brooms employed; and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing or between meals.

Item 2. *Walls and Ceilings:* Walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which food or drink is stored or prepared shall be finished in light color. The walls of all rooms in which food or drink is prepared or utensils are washed shall have a smooth, washable surface up to the level reached by splash or spray.

Public Health Reason: Painted or otherwise properly finished walls and ceilings are more easily kept clean and are therefore more likely to be kept clean. A light colored paint or finish aids in the even distribution of light and the detection of unclean conditions. Clean walls and ceilings are conducive to clean food-handling operations.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Walls and ceilings of all rooms in which food or drink is stored, prepared, or served are clean and in good repair.

2. Walls and ceilings of all rooms in which food or drink is prepared or stored are painted or finished in light color and refinished as often as necessary in a manner approved by the health officer.

3. The walls of all kitchens and sculleries have a smooth, washable surface up to the level reached by splash or spray, especially splash or spray from the dishwashing vats or machine.

Item 3. *Doors and windows:* When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing unless other effective means are provided to prevent the entrance of flies.

Public Health Reason: Flies may contaminate the food with disease organisms, thus nullifying the effectiveness of all other public-health safeguards.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All openings to the outer air are effectively screened with not less than 16-mesh wire or plastic cloth; and all doors are self-closing and screen doors to the outer air open outward; or

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2. Fans of sufficient power to prevent the entrance of flies are in use at all otherwise ineffectively protected openings; or

3. Flies are absent.

Window and door screens must be tight-fitting and free of holes. This includes the screens for skylights and transoms.

This item must be satisfied during the seasons of the year when flies are prevalent.

Item 4. *Lighting*: All rooms in which food or drink is stored, prepared or served, or in which utensils are washed shall be well lighted.

Public Health Reason: Ample light promotes cleanliness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

Natural light is present or artificial light sources are provided and properly used, which furnish 10 foot-candles on all working surfaces in rooms in which food or drink is prepared or served or in which utensils are washed, as measured by a suitable light meter. Storage rooms shall be considered to be sufficiently well lighted if approximately 4 foot-candles are provided at a distance of 30 inches from the floor.

Item 5. *Ventilation*: All rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be well ventilated.

Public Health Reason: Proper ventilation reduces bacterial concentration in the air, odors, condensation upon interior surfaces which may drop into food or utensils, smudging of walls and ceilings, excessive heat, and the concentration of toxic gases produced as a by-product of combustion or otherwise. Moisture promotes mold development.

Satisfactory Compliance: This item shall be deemed to have been satisfied if all rooms are adequately ventilated so as to be reasonably free of disagreeable odors and condensation. Ventilation equipment supplementary to windows and doors, such as adequate exhaust fans or stove-hoods, shall be provided if necessary. This requirement shall not apply to cold storage rooms.

Item 6. *Toilet Facilities*: Every lunch room shall be provided with adequate and conveniently located toilet facilities for its employees conforming with the rules and regulations of the State Board of Health. In lunch rooms hereafter constructed toilet rooms shall not open directly into any room in which food, drink, or utensils are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well lighted and ventilated. Handwashing signs shall be posted in each toilet room used by employees. In case privies or earth closets are permitted and used, they shall be separate from the restaurant building, and shall be of a sanitary type constructed and operated in conformity with the standards of the State Board of Health.

Public Health Reason: Human excreta is potentially dangerous and must be properly disposed of. The organisms causing typhoid fever, paratyphoid fever, and dysentery may be present in the body discharges of cases or carriers. Sanitary toilet facilities are necessary to protect the food and utensils from fecal contamination carried by flies, other insects, hands, or clothing. When the toilet facilities are of a satisfactory type and are kept clean and in good repair, the opportunities for the spread of contamination by the above means are minimized.

The provision of an intervening room or space between the toilet room and any room in which food, drink, or utensils are handled or stored makes it less likely that toilet-contaminated flies will enter these rooms. It will also minimize the spread of odors.

Where pit privies are used, it is essential that these be of a sanitary type in which the excreta is protected from flies and other agents of transmission, and that they be not rendered ineffective by improper operation.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Adequate toilet facilities conveniently located and complying with the rules and regulations of the State Board of Health are provided for employees.

2. In lunch rooms hereafter constructed there is an intervening room or vestibule between any toilet room and any room in which food or drink is prepared, served, or stored or in which utensils are handled or stored. The intervening room or vestibule shall be equipped with tight-fitting, self-closing doors, and shall be of such dimensions as to prevent both doors from being opened simultaneously by the same person.

3. The toilet-room doors are provided with springs or checks to make them self-closing.

4. The toilet room and fixtures are kept clean, sanitary, in good repair, and free from flies.

5. The toilet room is well lighted, and ventilated to the outside air.

6. Durable, legible signs are posted conspicuously in each toilet room directing em-

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ployees to wash their hands before returning to work. Such signs may be stenciled on the wall to prevent removal.

7. Where privies are used they shall be constructed and operated in accordance with the standards of the State Board of Health.

A booth open at the top or bottom shall not qualify as a toilet room.

Item 7. Water Supply: The water supply shall be easily accessible to all rooms in which food is prepared or utensils are washed, and shall be adequate, and of a safe, sanitary quality, and shall meet all requirements of the State Board of Health as to drinking water.

Public Health Reason: The water supply should be accessible so as to encourage its use in cleaning operations; it should be adequate so that cleaning will be thorough; and it should be of safe, sanitary quality in order to be suitable for drinking.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. The water supply is easily accessible to the kitchen or other rooms where food is prepared or utensils are washed. If the lunch room feeds a small number of pupils, a pump is acceptable; if the lunch room is not small, running water is necessary.

2. The water supply is ample in quantity to meet all needs of consumption and cleaning.

3. The water supply is approved by the State Board of Health.

4. Water storage or cooling tanks shall be of non-corrosive material, properly covered, clean, free from dust both inside and outside, and the inlet and outlet so arranged as to prevent contamination during filling and emptying.

5. No common drinking cups are in use.

Item 8. Lavatory Facilities: Adequate and convenient hand-washing facilities shall be provided, including soap, and approved sanitary towels. The use of a common towel is prohibited. No employees shall resume work after using the toilet room without first washing his hands.

Public Health Reason: The use of washing facilities and sanitary towels is essential to the personal cleanliness of food handlers.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. Handwashing facilities, including soap and individual cloth or paper towels are provided. Sinks used for dishwashing are not to be used for handwashing.

2. Hand washing facilities are adequate and convenient to toilet rooms.

3. Soap and clean towels are provided.

4. All employees wash their hands before starting work and after each visit to the toilet.

Item 9. Construction of Utensils and Equipment: All multi-use utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of a lunch room shall be so constructed as to be easily cleaned and shall be kept in good repair.

Public Health Reason: If the utensils and equipment are not so constructed that they can easily be cleaned, and are not kept in good repair, it is unlikely that they will be properly cleaned.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All surfaces with which food or drink comes in contact consist of smooth, not readily corrodible material.

2. All surfaces with which food or drink comes in contact are in good repair, free of breaks, corrosion, open seams, cracks, and chipped places. This requirement precludes the use of any type of equipment so designed as to permit food or drink routinely to come in contact with V-type threaded surfaces. In all cases where a rotating shaft is inserted through a surface with which food or drink comes in contact, the inspector shall assure himself that the joint between the moving and stationary surfaces is close fitting.

3. All surfaces with which food or drink comes in contact are easily accessible for cleaning, and are self-draining.

4. All display cases, windows, counters, shelves, tables, refrigeration equipment, stoves, hoods, mixers, meat grinders, and other equipment are so constructed as to be easily cleaned, and are in good repair.

Item 10. Cleaning and Bactericidal Treatment of Utensils and Equipment: All equipment, including display cases or windows, counters, shelves, tables, refrigerators, stoves, hoods, and sinks, shall be kept clean and free from dust, dirt, insects, and other contaminating material. All cloths used by employees shall be clean. Single-service containers shall be used only once.

All multi-use eating and drinking utensils shall be thoroughly cleaned and effectively subjected to an approved bactericidal process after each usage. All multi-use utensils used in the preparation or serving of food and drink shall be thoroughly cleaned and ef-

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fectively subjected to an approved bactericidal process immediately following the day's operation. Drying cloths, if used, shall be clean and shall be used for no other purpose.

Public Health Reason: Food cannot be kept clean and safe if permitted to come in contact with containers, utensils, and equipment which have not been properly cleaned and given bactericidal treatment. The diseases which this is intended to guard against are those in which the infective agent appears in the saliva or other body discharges.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All equipment, including display cases and windows, counters, shelves, tables, meat-blocks, refrigerators, stoves, and hoods, are kept clean and free from dust, dirt, insects, and other contaminating material.

2. All tablecloths, napkins, and cloths used by employees are clean.

3. Single-service articles, such as paper cups, plates, straws, and milk bottle caps, are used once only.

4. All multi-service eating and drinking utensils are thoroughly cleaned after each usage, and all multi-use utensils used in the preparation or serving of food and drink are thoroughly cleaned immediately following the day's operation, in such manner as to be clean to the sight and touch. A suitable detergent shall be used.

5. After cleaning, all such utensils are effectively subjected to one or more of the following or other equivalent approved bactericidal processes:

- (a) Immersion for at least 2 minutes in clean, hot water at a temperature of at least 170° F. or for $\frac{1}{2}$ minute in boiling water. Unless actually boiling water is used an approved thermometer shall be available convenient to the vat. The pouring of scalding water over washed utensils shall not be accepted as satisfactory compliance.

- (b) Immersion for at least 2 minutes in a lukewarm chlorine bath containing at least 50 ppm of available chlorine if hypochlorites are used, or a concentration of equal bactericidal strength if chloramines are used. The bath should be made up at a strength of 100 ppm or more of hypochlorites and shall not be used after its strength has been reduced to 50 ppm.

- (c) Immersion for at least 2 minutes in an approved quaternary ammonium compound containing at least 200 ppm.

Item 11. Storage and Handling of Utensils and Equipment: After bactericidal treatment utensils shall be stored in a clean, dry place protected from flies, dust, and other contamination, and shall be handled in such a manner as to prevent contamination as far as practicable. Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner.

Public Health Reason: If utensils and equipment are not protected from contamination the value of bactericidal treatment may be nullified.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All containers and utensils are stored at a sufficient height above the floor in a clean, dry place protected from flies, splash, dust, overhead leakage and condensation, and other contamination. Wherever practicable containers and utensils shall be covered or inverted.

2. Drain racks, trays, and shelves are made of not readily corrodible material, and are kept clean.

3. Containers and utensils are not handled by the surfaces which come in contact with food or drink. Fingers should not touch the inside surfaces of glasses, cups, dishes, etc., nor the bowls of spoons, the tines of forks, or the blades of knives. Any equipment touched by the inspector shall be again subjected to bactericidal treatment before being used.

4. Paper cups, plates, straws, spoons, forks, and other single-service containers and utensils are purchased in sanitary cartons and stored therein in a clean, dry place until used, and after removal from the cartons these articles are handled in a sanitary manner. Laundered cloths and napkins shall be stored in a clean place until used.

Item 12. Disposal of Wastes: All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles, in such manner as not to become a nuisance.

Public Health Reason: All garbage, refuse, and liquid wastes resulting from the normal operation of a lunch room should be properly disposed of so as not to become a nuisance or a public health menace.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All liquid wastes resulting from the cleaning and rinsing of utensils and floors, from flush toilets, and from lavatories are disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the State Board of Health. Grease traps are recommended where much grease is discharged.

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2. All plumbing is so designed and installed as to prevent contamination of the water supply through back-siphonage from fixtures, including dishwashing machines, sinks, and steam tables.

3. All garbage is kept in tight, non-absorbent, and easily washable receptacles which are covered with close-fitting lids while pending removal.

4. All garbage, trash, and other waste material are removed from the premises as frequently as may be necessary to prevent nuisance and unsightliness, and are disposed of in a manner approved by the health officer.

5. All garbage receptacles are washed when emptied, and treated with a disinfectant if necessary, to prevent nuisance.

Item 13. *Refrigeration:* If any readily perishable food or drink is kept beyond the one lunch period, it shall be kept at or below 50° F. except when being prepared or served. Milk shall not be allowed to reach a higher temperature than 50° F.

Public Health Reason: Usually the bacteria in food are harmless, and if this were always true there would be no reason to refrigerate food except to prevent spoilage. There is, however, no way to be sure that pathogenic bacteria have not entered the food. The likelihood of contracting disease may be increased when the food contains large numbers of disease producing organisms or their toxins. For this reason perishable foods should be kept cold so that any small number of disease producing bacteria which may have entered will not be permitted to multiply.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. There is refrigeration equipment to maintain all perishable foods below 50° F. or all perishable food is consumed on the day of purchase.

2. Milk is either refrigerated below 50° F., or is delivered shortly before serving time. No milk is allowed to reach a higher temperature than 50° F.

3. Ice is handled and stored in an approved manner.

4. The drip from any ice box shall enter an open trapped drain or pan.

Item 14. *Wholesomeness of Food and Drink:* All food and drink shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption. All milk, fluid milk products, ice cream, and other frozen desserts served shall be from approved sources. Milk and fluid milk products shall be served in the individual original containers in which they were received from the distributor or from a bulk container equipped with an approved dispensing device: Provided, that this requirement shall not apply to cream, which may be served from the original bottle or from a dispenser approved for such service. All oysters, clams, and mussels shall be from approved sources; Provided further, that approved milk shall be A & B raw, A & B pasteurized and certified, canned or powdered.

Public Health Reason: It is necessary to know that food and drink are purchased from approved sources, so that it is insured that it is wholesome and safe when it enters the lunch room. Milk is necessary to a school child's diet, but unless it is handled carefully from the cow to the child's mouth, it is a dangerous food, as bacteria grow readily in milk.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All food and drink are wholesome and free from spoilage, and so prepared as to be safe for human consumption.

2. All milk, fluid milk products, ice cream, and other frozen desserts are from sources approved by the health officer. Only grade A or B raw, grade A or B pasteurized, certified, canned or powdered milk will be approved. Pasteurized milk is recommended wherever available.

3. Milk and fluid milk products are served in the original containers in which they were received or from a bulk dispenser approved by the State Board of Health.

4. Any oysters, clams, or mussels served shall be from approved sources.

Item 15. *Storage, Display, and Serving of Food and Drink:* All food and drink shall be so stored, displayed, and served as to be protected from dust, flies, vermin, depredation and pollution by rodents, unnecessary handling, droplet infection, overhead leakage, and other contamination. No animals or fowls shall be kept or allowed in any room in which food or drink is prepared or stored. All means necessary for the elimination of flies, roaches, and rodents shall be used.

Public Health Reason: Food or drink not properly protected from contamination may become a public health hazard.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All food and drink is stored in such manner as to be protected from dust, flies, vermin, unnecessary handling, droplet infection, overhead leakage and condensation, sewage

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back-flow, and other contamination. Evidence of the presence of rodents, roaches, ants, or other vermin shall be considered as a violation of this item. Food or drink shall not be stored or prepared beneath overhead sewer or drain pipes unless such pipes are provided with suitable means to carry off possible leakage or condensation. Food or drink shall not be stored on floors which are subject to flooding from sewage back-flow, such as those below street level. On new construction the location of a lunch room in a basement below the surface of the ground shall be discouraged. The pouring lips of bottles containing milk or other beverages in non-leakproof containers shall not be submerged in water for cooling.

2. All food and drink are handled and served in such manner as to minimize the opportunities for contamination. Serving of sliced butter and cracked ice shall not be by direct contact with fingers or hands, and manual contact with all food or drink shall be avoided insofar as is possible.

3. No animals or fowls are kept or allowed in any room in which food or drink is prepared or stored.

4. All supplementary means necessary for the elimination of flies, roaches, and rodents are employed. For the elimination of flies, fly-repellant fans, flypaper, fly traps, or fly-killing sprays or powders may be used. All poisonous compounds used in the extermination of rodents or insects shall be so colored as to be easily identified; however, poisonous substances should be used with extreme caution and compounds harmless to humans should be substituted wherever possible.

Item 16. *Cleanliness and Health of Employees:* Lunchroom workers, including student helpers, must be in good health, free from communicable disease, and have good health and work habits. Any person who has recently recovered from a communicable disease shall not be employed or re-employed until, in the opinion of the health officer or a licensed physician, it is safe to do so. All employees shall wear clean, washable outer garments and head covering. They shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment. Employees shall not expectorate or use tobacco in any form in rooms in which food is prepared.

Public Health Reason: Cleanliness, good health and habits of lunchroom workers is necessary to maintain standards of sanitation.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. All lunchroom workers, including student helpers, shall have a health card issued by the county or city health department before starting work. All health cards will expire in six months and new ones must be secured to continue work.

2. Any lunchroom worker contracting a communicable disease, including a common cold, must report same to the school principal and discontinue work until cured of the disease. Before continuing work the employee shall present the principal with a certificate from the health officer or a licensed physician indicating it is safe for them to do so.

3. The outer garments of all persons including dishwashers, engaged in handling food or utensils are washable, clean and are used for no other than lunch room duty. Street clothes can be worn if covered with clean, washable aprons or jackets.

4. Employees wear hair nets, head bands or caps.

5. The hands of all persons are kept clean while engaged in handling food, drink, utensils, or equipment.

6. There is no evidence of spitting or of the use of any form of tobacco by employees in rooms in which food is prepared.

Item 17. *Miscellaneous:* The premises of all lunch rooms shall be kept clean and free of litter or rubbish. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

Public Health Reason: Good housekeeping promotes cleanliness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

1. The premises are clean and free of litter and rubbish.

2. Dressing rooms or adequate lockers are provided for employees' clothing and are kept clean.

3. Containers are provided and soiled linens, coats, and aprons are kept therein.

Section 2. Enforcement interpretation:

These regulations are issued under the authority of the Code of Laws of 1952 and subsequent legislation. They shall be enforced by the Health Officer in accordance with interpretations and reasons which shall be provided by the State Board of Health. Super-

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intendents and Principals are responsible for general sanitary maintenance. School Trustees are responsible for construction, equipment, and maintenance of building and school property.

Section 3. Penalties:

The penalties for violation of these rules and regulations are contained in § 32-17, Code of Laws of South Carolina 1952.

Septic Tanks.

(Filed Secretary of State's office February 17, 1944.)

Section 1. A septic tank is recommended as a means of sewage treatment for a residence, place of business, camp, school, or institution where public sewers are inaccessible, impracticable, or non-existent, provided the septic tank will accomplish adequate and satisfactory treatment of the sewage. A septic tank shall not be installed in case connection to a public sewerage system is practicable.

Section 2. No septic tank shall be installed which has a net liquid capacity of less than five hundred (500) gallons.

Section 3. The plans for each septic tank shall be in accordance with approved engineering standards in general and the following standards in particular: the length shall be at least two (2) but not more than three (3) times the width; the uniform liquid depth shall be not less than four (4) feet; and the theoretical detention period shall be not less than twenty-four (24) hours based on the average daily flow.

Section 4. The plans for each septic tank having a capacity of one thousand (1,000) gallons or more shall have the approval of the state health officer before the tank is installed. Each such tank shall have a second or effluent compartment not longer than one-third of the total length of the tank nor shorter than three (3) feet, and shall be equipped with a dosing chamber and siphon if a tile field or filter is used for secondary treatment of the tank effluent.

Section 5. Each septic tank shall be installed so as to receive approval of the state board of health through a duly authorized agent.

Section 6. A grease trap shall be installed on the kitchen waste line preceding the septic tank in each case where the tank serves a boarding house, cafe, restaurant, hotel, or other public eating place. The grease trap shall have a theoretical detention period of at last thirty (30) minutes.

Section 7. No septic tank effluent shall be discharged into any stream without special approval of the state board of health through a duly authorized agent.

Sewer Systems and Sewage Treatment Plants.

(Filed Secretary of State's office February 17, 1944.)

Section 1. No sewage shall be placed or discharged to flow into any waters or upon the lands of the State in any manner determined by the board to be prejudicially affecting a public water supply or causing a nuisance.

Section 2. No municipality, corporation, company, institution, person or persons shall install or enter into contract for installing, making any additions, changes or alterations in a sewer system or sewage treatment plants until complete plans and specifications fully describing such sewage works have been submitted to and have the written approval of the state board of health.

Section 3. Upon application accompanied by an outline of any proposed sewer system or sewage treatment plant, or any changes in existing sewage works the general requirements which will meet the approval of the board will be outlined. Preliminary or incomplete plans may be submitted for approval and recommendations, if accompanied by a statement outlining omitted portions, detailed plans for which shall be submitted for final approval.

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Section 4. All plans shall be submitted in duplicate, one copy to be retained on file by the board and one returned to the owner. Plans shall be approved as to structural, mechanical and electrical features by licensed engineers before being submitted for approval by the board and shall include:

- (a) General plans
- (b) Detailed plans
- (c) Specifications
- (d) Engineer's report

Section 5. The engineer's report for sewage work shall cover:

(a) Sewage flow—State the present and estimated population for municipalities twenty-five years hence, and for both present and future needs.

(b) Industrial waste—Give character of industrial waste.

(c) Type of purification—Give reason for adopting the proposed method.

(d) Soil—Probable character of soil through which sewers will be laid and portion of the system that will be below normal ground water level.

(e) Outfall—Describe the stream or body into which the final effluent is to be discharged. If stream, give width, depth and estimated minimum flow; state for what it is used below the outlet and whether there are any special features, such as a dam, that will effect the flow. If a lake, give approximate area, also depth in vicinity of the outfall.

Section 6. In general, in the design and construction of sewerage work, approved modern practice shall be followed and a licensed engineer shall supervise all construction.

Section 7. Plans for sewage treatment plants will be approved only when the following rates of operations are not exceeded, except where special conditions exist, when the board may permit higher rates.

Section 8. Imhoff tanks.

(a) Settling chamber $1\frac{1}{2}$ to $2\frac{1}{2}$ hours retention.

(b) Sludge digestion chamber, capacity one to two (1 to 2) cubic feet per capita computed below a horizontal plan eighteen (18) inches below slot. Sand filters—1,000 persons per acre of area with minimum depth of three feet above the drains.

Contact beds—1,000 persons per acre of area per foot of depth with minimum depth of 4 feet.

Trickling filters—3,000 persons per acre of area per foot of depth with minimum depth of 5 feet.

The effective size of sand for filters should not be less than 0.2 millimeter nor more than 0.4 millimeter. Contact beds shall consist of stone not less than one-half inch nor more than 2 inches, and for trickling filters the sizes shall be three-quarters of an inch to two and one-half inches.

The discharge of sludge or screening into a stream or watercourse will not be permitted.

Section 9. On the completion of any sewage treatment plant or sewer system the state board of health shall be notified when the final inspection is to be made.

Shellfish.

THE SANITARY CONTROL OF THE SHELLFISH INDUSTRY.

(Filed Secretary of State's office December 18, 1945.)

This is to certify that, at a meeting of the Executive Committee of the State Board of Health of South Carolina, held at 3 P. M. on Wednesday, February 14, 1945, in the offices and quarters of the State Board of Health in Columbia, S. C., the following resolution was passed:

"WHEREAS, it is the desire of the State Board of Health to adopt uniform rules and regulations covering the sanitary control of the shellfish industry; AND WHEREAS, in pursuance of this expressed desire and need, it is necessary to amend the present rules and regulations covering the handling of shellfish in shells only and the operation of oyster-shucking plants, and any other rule and regulation governing the sanitation of the shellfish industry;

"NOW THEREFORE BE IT RESOLVED, Under the authority of the constitution of the State of South Carolina, of Section 5002 of the Civil Code of 1942, of Act No. 132 of the Statutes-at-Large 1937, of Section 37 of the General Appropriations Act of 1945-

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1946, the Executive Committee of the State Board of Health hereby strikes out of the Code of Laws of 1942, Section 5002, Pages 134 and 135, all regulations governing the 'Handling of Shellfish in Shells Only' and rules and regulations governing the operation of 'Oyster Shucking Houses', and in lieu thereof promulgates the following rules and regulations of the South Carolina State Board of Health for the sanitary control of the shellfish industry."

Introduction.

In 1925, State and local health authorities and the shellfish producers requested the Public Health Service to exercise supervision over the sanitary quality of shellfish shipped in interstate commerce. In conformance with this request, a system of endorsement of State control measures, when found acceptable to the Public Health Service, was developed whereby each shellfish-producing State presents a list of certified dealers which it has determined conforms to State requirements. Such lists, if the State control measures are acceptable to the Public Health Service, are published periodically for the information of consumer States. To establish the degree of State control deemed essential, the Public Health Service prepared the "Minimum Requirements for Endorsement of State Shellfish Control Measures and Certifications for Shippers in Interstate Commerce."

As a development of the aforesaid Minimum Requirements, the present Manual has been prepared to enumerate more specifically the items of sanitation which should be observed. Certain inspection forms and rating sheets now under preparation may be used to determine as precisely as possible the degree of compliance attained with Public Health Service requirements in each producing State.

If scarcity of materials or other factors make complete compliance impracticable during the period of the emergency the Public Health Service will give reasonable consideration to such conditions for the purpose of retaining any plant so affected on the certified list until these shortages disappear. It is anticipated that by the end of the present shellfish season these deficiencies will have been overcome so that compliance may be complete from that time forward.

General Administrative Procedure.

In carrying out this cooperative control the State, the Industry, and the Public Health Service are each responsible for certain procedures. These procedures are in general as follows:

The State shellfish regulatory authorities promulgate the requirements which must be met by the Industry, the Industry carries out the State requirements, and the Public Health Service evaluates the extent of compliance with its own requirements and expresses its opinion regarding the adequacy of compliance upon which will be based its endorsement or withholding of endorsement of State control measures.

1—Procedures to be followed by the State.

(a) The State adopts adequate laws and regulations for the sanitary control of the shellfish industry.

(b) The State shellfish regulatory authority makes the necessary inspections, sanitary and bacteriological surveys of the growing areas, indicating areas from which shellfish may be marketed, and the contaminated areas from which market shellfish may not be taken and patrols restricted areas.

(c) The State shellfish regulatory authority inspects each shellfish plant periodically. It is intended that the State be guided by this manual in the making of inspections and in evaluating the results thereof.

(d) The State shellfish regulatory authority issues numbered certificates to producers and dealers handling shellfish entering interstate commerce after it has been determined that they conform with State requirements.

(e) The State shellfish regulatory authority makes all State records and information pertaining to its sanitary control of the shellfish industry available to the Public Health Service.

2—Procedures to be followed by the industry.

(a) Holders of State Certificates place the number of the certificate on each package of shellfish shipped in interstate commerce.

(b) All interstate shippers of shellfish keep records of all interstate shipments in such detail as to permit tracing of any particular shipment to the point of origin. Such

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records are made available for inspection at reasonable hours by representatives of the State regulatory authority and of the Public Health Service.

3—Procedures to be followed by the Public Health Service.

(a) The Public Health Service inspects and rates a representative number of shucking and packing plants annually in each State, cooperates with the States in making sanitary and bacteriological surveys of growing areas or makes such surveys independently by agreement with the State regulatory authorities. The entire State control procedure and machinery for sanitary control of shellfish are examined and rated annually by the Public Health Service.

(b) The Public Health Service publishes and keeps current a list of interstate shippers of shellfish certified by each shellfish-producing State for the information of health authorities and others concerned in shellfish-consuming States.

1. Definitions.

The following definitions shall apply in the interpretation of this manual:

And/or—Where this term is used, "and" shall apply where possible, otherwise "or" shall apply.

Area, growing—Growing area is any area in which market shellfish or seed shellfish are growing. (Sec. 2)

Areas, approved—Areas which, after examination as required in 2.3, are approved.

Areas, grossly polluted-closed—Areas from which the taking of shellfish for market purposes is not permitted. (Sec. 2.4.)

Areas, moderately polluted, restricted—Areas which are intermediate between approved and grossly polluted areas as regards exposure to and protection against fecal pollution.*

Cleansing—Cleansing is the artificial process of removing from shellfish such contamination as they have acquired while growing in moderately polluted growing areas. (Sec. 4.2)

Coliform organisms—Wherever the term coliform organisms, coliform group, or coliform bacteria occurs, such term shall be considered to include all of the organisms which upon transfer from a positive presumptive test (gas positive in lactose broth) show fermentation with gas formation in lactose medium containing 0.00133 per cent brilliant green and 2.0 per cent of bile (brilliant green lactose bile broth).

Conditioning—Conditioning is that process which permits market shellfish to free themselves of retained sand, grit, and/or silt under controlled conditions. (Sec. 4.1)

Depletion—Depletion is the complete removal of all growing shellfish from the area in question. (Sec. 2.9)

Floating—Floating consists of holding market-size shellfish on structures of wood or other material supported by pontoons or piling in shallow bodies of water near shore.**

Re-laying—Re-laying is that process which involves the removal of market shellfish from any of the three classes of growing areas to other growing areas to improve their quality or growth or both. (Sec. 2.7)

Repacking—Repacking is the packing of shucked shellfish in plants other than those in which they have been shucked.

Shellfish—Shellfish means all fresh and frozen oysters, clams, and mussels, either shucked or in the shell, and any fresh edible products thereof.

Shellfish, market—Market shellfish are those shellfish which are harvested and/or prepared for sale to the consumer.

Shellfish, seed—Seed shellfish are those shellfish which are harvested for use by the gatherer or for sale to a shellfish planter or grower to be laid down again in growing areas for further growth and cultivation.

Shellfish, shucked—Shucked shellfish are those shellfish which have been removed from their shells.

* A decision as to whether any given areas in this class may be used for the taking of shellfish, and if so, under what conditions should be based, in each instance, upon a careful and thorough study of the area which would take into account all factors which might affect the decision, namely; the findings on sanitary survey and on bacteriological examinations of the water. (Sec. 2.1)

** Shallow water is considered to be water which has a depth of less than 5 feet at low tide. No rigid definition of what is near shore seems practicable. Generally speaking, however, areas within a thousand feet of mean low water mark should be considered as being near shore. Cultivation of shellfish on trays supported on piling, near shore or in lagoons surrounded by dikes connected to the shore or in shallow areas near shore shall be considered as being in the same category, as far as risks to the public health are concerned, as the practice of floating, and shall be subjected to the same, or equally rigid, restrictions. (Sec. 4.3)

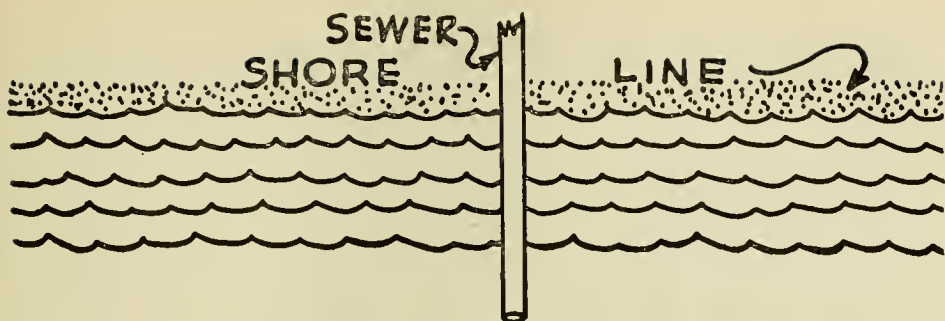
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Shell-stock—Shell stock are shellfish which remain in their shells.

Storage, dry—Dry storage is the storage of market shell stock out of water. (Sec. 4.4)

Storage, wet—Wet storage is the storage in water of shellfish intended to be marketed within three months, whether the storage be in natural bodies of water or in tanks containing sea water. (Sec. 4.3)

Transplanting—Transplanting is the process which involves the removal of seed shellfish from one area to another area.



RESTRICTED AREA CLOSED

GROSSLY POLLUTED

CONTOUR LINE OF 700 COLIFORMS PER 100ML. EXPR
AS THE MOST PROBABLE NUMBER

RESTRICTED AREA MODERATELY POLLUTED

CONTOUR LINE OF 700 COLIFORMS PER 100ML. EXPR
AS THE MOST PROBABLE NUMBER

APPROVED AREA

SKETCH ILLUSTRATING KINDS
OF SHELL FISH AREAS.

2. Growing areas.

2.1. Surveys.

All shellfish growing areas in any State shall have been examined by sanitary and bacteriological surveys, prior to the approval of interstate shipments of shellfish from such areas.

Public Health Reason: Shellfish grow in bodies of salt water receiving fresh water run-off. Frequently, the rivers or smaller streams entering shellfish growing areas carry contamination which may either have been washed into them from the land areas drained by such rivers, streams, or tributaries, or may have been conveyed into them through artificial structures such as drains, canals, or sewers. Many times they receive sewage originating in cities, towns, villages, or isolated houses. Unless careful surveys, supplemented by bacteriological examinations of the water are made to ascertain whether areas from which shellfish are shipped to market are not at times exposed to serious contamination of human origin, such shellfish may become a medium through which disease may be conveyed. Periodic bacteriological examination of samples of water does not take the place of sanitary surveys but is an integral part of such surveys.

Satisfactory Compliance: This item shall be deemed to have been satisfied if: a thorough examination of the water shed tributary to the shellfish growing area has been made by technically trained persons competent to evaluate the probable effect upon the shellfish growing area of the discharge of sewage into tributary streams taking into account the following factors:

- (1) The quantity of pollution from all sources, including sewage of domestic origin.
- (2) The degree of treatment (if any) given the sewage before being discharged, particularly as concerns the probable destruction of pathogenic organisms.
- (3) The degree of dilution of the sewage with clean water.
- (4) The relative freshness of sewage discharges as determined by the lapse of time between such discharges and their arrival in the shellfish area.
- (5) The opportunities afforded for natural self-purification of the area.
- (6) The bacteriological examinations of water samples collected from predetermined stations in the area on different days sufficient to give a bacteriological picture of the water under various stages of tide and under varying weather conditions.*

2.2 Classification of shellfish areas.

All shellfish growing areas in any State shall be classified as approved or restricted. Restricted areas may be further subdivided and designated as either moderately polluted or grossly polluted. In order to confirm or modify tentative classifications based on the sanitary survey, moderately polluted shellfish growing areas should be examined rather intensively for the presence and density of coliform organisms, particularly in those portions of the areas bordering on the approved areas. Only occasional bacteriological samples are necessary from areas which the sanitary survey indicates are obviously free from pollution or are grossly polluted.

Public Health Reason: The probable presence or absence of pathogenic organisms in shellfish waters and therefore the probable contamination of shellfish contained in such waters is of the greatest importance in deciding whether or not shellfish obtained from such areas may be marketed directly without submitting them to further treatment or whether the shellfish obtained from such areas should be subjected to purification or cleansing processes before granting permission to market them. There is no practicable process on which to base judgment regarding the probable freedom of such areas from the presence of pathogenic organisms other than by making a careful inventory of all the actual and potential sources of pollution which might affect the area, carefully weighing the probability that natural purification will protect shellfish areas and testing any conclusions thus reached by a series of bacteriological examinations of samples of water to determine the most probable number of coliform bacteria present (organisms associated with sewage pollution).

2.3 Approved shellfish areas.

Approved shellfish areas shall satisfy the following conditions:

* In making the bacteriological survey the number of samples examined from each station should be sufficient to give a true picture of the number of coliform organisms present in the water under the various tides and weather conditions occurring during the shellfish harvesting period.

The minimum number will vary with the various areas and the purpose for which the examinations are made. Where examinations are made to define the line between approved and restricted areas it is believed, that a record of at least 15 samples per station in the critical area is necessary.

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The sanitary survey shall disclose on likelihood that human fecal discharges reach the area in dangerous concentrations or before sufficient time has elapsed to render such discharges innocuous.

The median bacteriological content of samples of water collected from those portions of the area determined by sanitary survey to be most probably exposed to fecal contamination shall not show the presence of organisms of the coliform group in excess of 70 per 100 ml. of water expressed in terms of most probable number (MPN) in a series of samples from each station sufficient to determine the conditions existing. These samples shall have been collected throughout the suspected area during one or more active shellfish seasons during which conditions as disclosed by the sanitary survey shall have remained practically unchanged. The samples shall have been collected under various stages of tide and with due consideration to varying weather conditions.

Bacteriological re-examinations of the area must be made whenever periodical sanitary surveys made not less frequently than once every two years, indicate that there may have been a significant increase in the quantity of sewage entering the area since the last bacteriological examinations were made.

Permanent sampling stations shall be located on a chart of the area showing principal hydrographic and topographic data. (Charts of the U. S. Coast and Geodetic Survey should be used whenever they are available for the area under consideration.)

The spacing of the sampling stations shall take into consideration the location of shellfish areas, the depth of water at low tide, and the proximity of probable sources of pollution. A larger number of samples shall be taken in that portion of the area bordering on the moderately polluted area than in that portion of the area bordering on areas free from pollution. In order to establish a line between an approved area and a moderately polluted area, sampling points should not ordinarily be spaced at a greater distance than approximately 1,000 feet in any direction.

In such bacteriological surveys a proportional number of samples should be collected under various tidal conditions, and with heavy rainfall and dry weather runoffs, to obtain an adequate picture of the possible pollution of the area.

2.4 Grossly polluted closed areas.

If the sanitary survey discloses that the area is either obviously subject to gross pollution by direct discharge of sewage and other wastes or, demonstrably exposed more or less continuously to even slight direct contamination with human fecal discharges from nearby sources ashore, or if an area usually of good quality, is exposed to occasional direct and immediate contamination with human fecal discharges or if bacteriological examinations indicate that the degree of contamination is greater than that tolerated for moderately polluted areas, then such area may be declared to be a grossly polluted area from which the taking of shellfish for market purposes shall not be permitted.

2.5 Moderately polluted restricted areas.

After making sanitary and bacteriological surveys as described in 2.1 the area may be declared to be a moderately polluted restricted area if it is shown that:

(1) The area is intermediate between approved and grossly polluted areas as regards exposure to and protection against fecal pollution.

(2) The bacteriological survey discloses that the median bacteriological content of the water expressed in terms of the most probable number (M.P.N.) of coliform organisms per 100 ml. lies between 70 and 700, and if,

(3) The sanitary survey shows that such contamination is probably of human origin.

When an area has been classified as a Moderately Polluted Restricted Area bacteriological re-examination of the water in that portion of the area adjacent to the grossly polluted area shall be made at least every year if a partial sanitary resurvey indicates that an increase in contamination may have taken place. Partial sanitary resurveys consisting at least of a review of maps, office records or data regarding significant changes in population, sewerage systems, sewage treatment facilities or of other factors which might tend to cause an increase in the pollution of the area shall be made at least yearly. Complete sanitary surveys shall be made whenever the State regulatory authority issuing interstate shippers certificates deems such survey to be necessary. Information obtained from such surveys shall be made available to the Surgeon General of the U. S. Public Health Service whenever data on a particular area are desired.

2.6 Hibernation (Oysters).

Under written permission from and under strict control by the State regulatory authority subject to the following restrictions oysters may be taken for market purposes from moderately polluted areas during the period that the oyster is in hibernation.

The taking of oysters will be permitted only during the period when the temperature of the water remains consistently at or below 41° F. and permission will not be given by the State regulatory authority until it has determined that the coliform content of the oysters does not exceed 20 per 100 ml. expressed as M.P.N.

Public Health Reason: It is recognized that the oyster enters a state of hibernation during periods when the temperature of the water overlying the growing area is 41° F. or less and that while in that state is relatively free of bacteria of the coliform group.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Written permission to take oysters from a specified area is issued by the State regulatory authority.

(2) The taking of oysters from the area be limited to the period when the overlying water remains consistently at or below 41° F.

(3) No oysters are taken for market purposes until bacteriological examination shows a coliform content of 20 or less per 100 ml. expressed as M.P.N.

(4) The State regulatory authority maintains a strict control over the operations.

2.7 Re-laying.

Shellfish may be re-laid from one approved growing area to another approved area at any time. Shellfish may be re-laid from a polluted area to an approved area only under such restrictions as will not permit polluted shellfish to reach the consumer.

Public Health Reason: Shellfish from approved growing areas should not jeopardize the public health if they find their way to the market during the re-laying process. On the other hand, those from polluted areas may cause illness and death if they are sold after removal from the polluted grounds and before having been re-laid in approved areas for self-cleansing purposes. They must be held in approved areas for a sufficient length of time at a water temperature above 50° F. to accomplish self-cleansing. Below this temperature self-cleansing proceeds too slowly to make it effective. To eliminate the health hazard involved in re-laying, it is necessary to regulate the movement of shellfish from polluted to clean areas by means of suitable restrictions.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Written permission is given by the State agency having jurisdiction to the person desiring to take shellfish from a polluted area, and if notification of such permission is given to all other interested State agencies.

(2) Such permission is given only to responsible persons, said responsibility having been determined by the past record of the permit receiver.

(3) Taking of shellfish from polluted areas and laying them in approved areas is under the close supervision of the State agency having jurisdiction over shellfish sanitation.

(4) Shellfish taken from polluted areas and re-laid in approved areas are held in the approved areas for a period of at least 14 consecutive days, during which period the temperature of the water is constantly above 50° F.

(5) Shellfish re-laid during the marketing season in approved areas from polluted areas are not taken from the approved areas for market purposes until permission to do so has been received in writing from the State agency having authority over shellfish sanitation.

2.8 Policing of closed areas.

All shellfish areas which have been closed as the result of unsatisfactory findings following sanitary or bacteriological surveys shall be posted, warning the public that the shellfish are unsafe for human consumption and shall not be removed except for re-laying or transplanting, also stating the penalty to be imposed on those convicted of removing shellfish illegally from these areas. Closed areas shall be patrolled by the agency of the State government possessing authority at frequent intervals to make certain that no shellfish are removed illegally. This section shall apply both to areas used for the production of seed as well as to areas used for the production of market shellfish.

Public Health Reason: Because every effort made by the shellfish authorities to see that shellfish are produced and marketed under proper sanitary conditions may be defeated unless shellfish from closed areas are excluded from market, it becomes important that necessary steps to exclude unsafe shellfish be taken. This may be accomplished by adequately advertising and/or posting and policing closed areas, and by the rigid en-

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forcement of appropriate laws. There is no sharp line of demarcation between large sized seed shellfish and small sized market shellfish, hence it is necessary to control operations pertaining to both classes of shellfish by means of certain safeguards.

Satisfactory Compliance: This item shall be deemed to have been satisfied if shellfish are not taken from closed areas illegally.

In the absence of direct evidence that shellfish have been taken illegally from closed areas, the following items may be used as criteria in judging the effectiveness of measures taken:

(1) If the boundaries of closed areas containing shellfish are conspicuously marked by fixed objects (preferably located ashore) which are easily visible from any point inside the closed area and if:

(2) Printed copies of the description of closed areas are supplied to persons licensed to take shellfish in the vicinity of such closed areas or if such copies are furnished without charge to any bona fide shellfish digger, tonger, dredge operator or other interested persons requesting such description.

(3) If the closed areas are under periodic and effective patrol by the State department having jurisdiction, due consideration being given to surprise visits made at night.

(4) If record data showing designated closed areas and their relationship to patrol activities and violations discovered are maintained in the central office of the State supervisory agency.

2.9 Depletion of closed areas.

In some cases it may be more economical to deplete a closed shellfish area than to attempt patrol. When this is undertaken all shellfish of market size and as many of smaller size as can be gathered by reasonable methods shall be removed from the areas under direct supervision of the State regulatory authority. A similar depletion of the area shall be carried out at approximately two-year intervals.

Public Health Reason: Complete removal of shellfish from polluted areas to clean areas, under appropriate precautions, is the best safeguard against unsafe shellfish reaching the market and producing illness in consumers.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) In the absence of effective patrolling the removal of shellfish from closed areas is effected within two years of the date of adoption of this manual; marketable shellfish are removed from the closed areas every two years thereafter, and,

(2) The removal operations are carried out by a State agency or under the direct supervision of a State agency.

3. Harvesting and Handling.

3.1 Boats.

All boats used for tonging, dredging, or transporting shellfish (including "buy" boats), shall be so constructed, operated and maintained as to prevent contamination of the shellfish in the boat.

Public Health Reason: Precautions exercised in gathering shellfish from approved growing areas may be nullified by contamination from bilge water in the boat, by leakage or washing of contaminated water into the boat or over the sides when the boat is in areas subject to contamination.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Perforated platforms or storage bins are so constructed and located as to prevent bilge water or overboard polluted water from coming into contact with the shellfish.

(2) All water used for boat cleansing comes from unpolluted sources.

3.2 Disposal of body excretions.

During the marketing season no body excretions shall be discharged overboard from a boat used in harvesting shellfish while it is in areas from which shellfish are being dredged, tonged, or otherwise gathered. Such boats shall be provided with a watertight, metal container, having a close-fitting metal cover, for reception of body excretions. The container shall be securely fastened to prevent spilling. The contents of the container shall be disposed of by discharging into suitable sewage disposal units on shore or by discharging overboard in areas designated for this purpose by the State health authorities; or by burying; or by burning; after which the container shall be thoroughly cleaned before being returned to the boat.

Public Health Reason: Since gastro-intestinal infections are at times conveyed by raw shellfish, it is highly important to protect the shellfish on boats and in shellfish growing

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areas, as well as areas adjacent thereto from infection with such organisms as are known to be conveyed through excretions of the human body.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) A boat which is away from shore toilet facilities more than three hours has thereon a watertight container made of heavy gauge metal, with a tight-fitting cover, of sufficient capacity to provide for the crew but in no case less than two gallon capacity.

(2) The container is securely fastened to the boat to avoid spilling and in such a position as to be at the maximum distance from shellfish on board.

(3) There is evidence that the container is used for the purpose provided for.

(4) The contents of the container are properly disposed of by discharging overboard in a designated area or carried to shore for disposal into a sewerage system or a sanitary privy; or buried or incinerated.

(5) The container is thoroughly cleansed after the contents have been removed and before it is returned to the boat.

3.3 Procedure to be employed in the bacteriological examination of shellfish and shellfish waters.

The procedures to be followed are those given in the Report of the American Public Health Association Standard Methods Committee to the Committee on Research and Standards, Journal of the American Public Health Association, Vol. 33, No. 5, May 1943, pp 582-91. The report is entitled: Recommended Method of Procedure for Bacteriological Examination of Shellfish and Shellfish Waters.*

These procedures include those for bacteriological examination of shellfish growing waters and for bacteriological examination of shellfish. The interpretation and application of results of the bacteriological examination of shellfish growing waters have been set forth in 2.3, 2.4, 2.5.

Until more data are available, any attempt to interpret the results of bacteriological examinations of shellfish other than oysters as taken from growing areas or cleansing processes in terms of their probable freedom from pathogenic organisms is questionable. For the time being, the chief reliance should be placed on the quality of the water over the growing areas or that used in cleansing processes. It seems reasonable to assume, however, that an M.P.N. value of 2400 or more coliform organisms per 100 ml. occurring in successive samples of shellfish, other than oysters, as taken from the growing area, at point of shucking or after cleansing should be interpreted as an indication of unfavorable conditions or practices surrounding the production and handling of the product and should necessitate investigation and further control activities on the part of the regulatory agency.

The following applies to the interpretation and application of results obtained from the bacteriological examination of oysters only.

When an M.P.N. value of 230 or more of coliform organisms per 100 ml. of sample persists in oyster shellstock sampled at the growing areas or in shellstock or shucked oysters at the point of shucking, it should be interpreted as an indication of unfavorable conditions or practices surrounding the production and handling of the product and should necessitate investigation and improved control measures on the part of the supervisory agency, providing that in occasional samples, an M.P.N. value of 2400 coliform organisms per 100 ml. may be tolerated in some samples. If this occurs in more than two consecutive samples, corrective measures shall be enforced by the regulatory authority.

3.4 Comparison of coliform organism scores with most probable number of coliform organisms per 100 milliliter—

Score	M.P.N.	Score	M.P.N.
1	20	41	1300
2	45	50	2400
3	78	140	3500
4	130	230	5400
5	230	320	9200
14	330	410	16000
23	490	500	24000
32	790	1400	35000

* Copies are available from the American Public Health Association, 1790 Broadway, New York, N. Y., for 25 cents per copy.

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3.5 Examination of mussels and clams for presence of poison.

A representative number of samples of mussels and clams shall be collected from growing areas suspected of containing poisonous shellfish and examined for the presence of poison before mussels and clams intended for human consumption are taken from such growing areas.

Public Health Reason: Numerous cases of mussel poisoning and some deaths have occurred, especially on the Pacific Coast, from eating poisoned mussels. Research has indicated that the poison may be present in both mussels and clams and has been associated with the presence of the dinoflagellate *gonyaulax catenella* in the water in which the shellfish grow. A method has been devised for detecting and quantitatively estimating the poison in shellfish but no specific treatment has been found for the poisoning.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

Representative samples of shellfish from growing areas are collected and examined for the presence of toxic substances whenever their occurrence is suspected or deemed possible. The need for making this test can be judged after experience by the presence in the overlying water of the dinoflagellates associated with mussel poisoning, by the season of the year, and by other considerations such as reported poisonings among consumers or handlers of shellfish.

4. Preparing for Market—Processing.

4.1 Conditioning.

Conditioning of shellfish from approved growing areas as defined in 2.3, p 9 shall not be permitted in South Carolina. This conditioning of oysters in natural bodies of water subject to all non-controllable influences has been found to introduce so many possibilities of contamination as to jeopardize the growing of the shellfish undergoing conditioning processes. The process of conditioning oysters in water-tight tanks is not feasible and, therefore, is not allowed in South Carolina.

4.2 Cleansing.

The artificial cleansing of shellfish from clean or moderately polluted growing areas as defined in 2.5, p 10 is prohibited in South Carolina. This applies even if the cleansing is to be carried out in watertight tanks. This does not prevent the transfer of oysters from a polluted area to a non-polluted area with the permission of the Control Board.

4.3 Floating and wet storage.

Floating and wet storage of shellfish as defined in Definitions, pp 4, and 5, shall not be permitted in South Carolina. The removal of shellfish from growing beds to artificial floats usually anchored close to shore and habitations and frequently in shallow water for convenience, subjects an accumulated quantity of shellfish in an abnormal number of layers, to concentrations of pollution which may reach the floats and thus render them dangerous for use.

4.4 Dry storage.

Shell stock in dry storage shall be adequately protected from contamination at all times.

Public Health Reason: If shell stock is stored in a place where ground or surface water or drainage from floors, bilges, and equipment can accumulate, contamination carried by such water or drainage may contaminate the shell stock. Shellfish may be contaminated also by domestic animals and rodents if they are not excluded.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

- (1) Floor of storage room is constructed of an impervious material free from cracks, holes, ruts, or other uneven surfaces, and is graded to assure complete and rapid drainage.
- (2) Storage area is protected from flooding.
- (3) Walls are smooth and of material which will not deteriorate under repeated washings.
- (4) Storage area contains no material or equipment not pertaining to storage of shellfish.
- (5) Bins, hoppers, sacks, barrels, or other containers fully protect the stored shellfish from contamination.
- (6) There is found no evidence of animals, rodents, and unauthorized persons having access to the plant.

Shucking Plant—Future plants will be constructed of concrete, tile or brick.

4.5 Plant arrangement.

Unless shellfish are shucked directly into packing containers with no further processing,

the shucking and packing processes shall be done in separate rooms. There shall be installed in the partition between the two rooms a delivery window, through which the shucked stock is passed to the packing room.

Provision should be made for storing the employees outer garments, aprons, gloves, et cetera in a separate room or rooms, or in lockers.

Public Health Reason: The nature of the shucking operation is such that the shuckers' clothing becomes very soiled. If shuckers enter the packing room, shucked stock, cans, and other equipment may become contaminated. Rooms or lockers are provided for clothing, aprons and gloves to eliminate the tendency to store such articles on the shucking benches or in packing rooms which interferes with the shucking and packing operations and the cleaning activities.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Shucking and packing operations are carried on in separate rooms unless shellfish are shucked directly into packing cans with no further processing.

(2) Shuckers do not go into or through the packing room for any purpose.

(3) The delivery window is provided with a suitable slide or door and the shelf is of smooth metal, concrete, or tile curbed on the packing room side and draining toward the shucking room.

(4) Well maintained rooms or lockers are provided for storing clothing, aprons, and gloves of employees.

4.6 Floors.

The floors shall be constructed of concrete or other impervious material; graded to drain quickly; free from cracks or uneven surfaces; and maintained in good condition.

Public Health Reason: Properly graded floors of durable, impervious material such as concrete, maintained in good condition, promote rapid disposal of liquid and solid wastes, are easily cleansed and are, therefore, more apt to be kept in a clean and sanitary condition.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The floor is of impervious material.

(2) Graded so that the drainage is complete and rapid.

(3) Free from holes, cracks, ruts, or other uneven surface.

4.7 Walls and ceiling.

The walls shall be smooth, concrete, washable, and shall be kept clean. The ceiling and the roof shall be tight to prevent entrance of dirt or other foreign material.

Public Health Reason: Light colored and properly finished walls and ceiling encourage cleanliness and are more easily cleaned. A tight ceiling and roof reduce the possibility of dirt or other foreign material reaching the product, especially during a rain.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The walls are of smooth concrete, which will not deteriorate under washing and flushing and are maintained in good condition.

(2) The ceiling or roof is tight.

4.8 Screening.

During seasons when insects, especially house flies, are on the wing, space used for washing and packing shucked shellfish shall have all openings effectively screened, including outward-opening, self-closing doors, unless other effective means are provided to prevent the entrance of flies.

Public Health Reason: The habits and characteristics of flies are such that they may become an important factor in the spread of intestinal disease if flies are allowed to come in contact with shucked shellfish.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All openings are effectively screened with screening approved by the State regulatory authority whenever flies are evident. Broken, torn, or poorly fitted screens shall not be accepted as satisfactory compliance.

(2) Outer screen doors open outward and are self-closing. Exclusion of flies can be made more effective when screen doors open outward and are provided with closing devices, such as spring hinge, pulley, and weight, coil spring, or similar device.

(3) Other effective means are provided to prevent the entrance of flies and if, at the same time, no flies are present in the packing room.

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4.9 Light.

Ample light to work by shall be provided in all working rooms. When necessary, natural light shall be supplemented with artificial light.

Public Health Reason: Adequate light encourages cleanliness of working rooms and shucking processes.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Existing State regulations governing lighting are complied with or in the absence of such regulations light of an intensity of not less than 5 foot candles is maintained on all working surfaces when workers are at their working positions.

(2) Windows or other openings have an aggregate area of not less than one-tenth of the total floor area and are so arranged as to insure proper light distribution.

(3) All windows and skylights are kept clean.

(4) Artificial light is provided wherever shucking and packing are practiced at night or on dark days.

4.10 Heating and ventilation.

Working rooms shall be heated when necessary and ventilated so that workers may operate with safety and efficiency and without impairing their health.

Public Health Reason: If sufficient heat is provided the efficiency of the operators is affected and may result in practices which impair the sanitary quality of the shellfish.

Inadequate ventilation or overcrowding promotes the spread of respiratory infections among employees.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) A comfortable temperature is maintained.

(2) Ventilation is provided sufficient to eliminate odors and discomfort.

(3) At least 10 square feet of floor space is provided for each shucker.

4.11 Toilet facilities.

Every shellfish shucking house shall be provided with separate sanitary toilets for each sex, conveniently located, but not opening directly into any shucking room. Such toilets shall be constructed according to local and State requirements, but at least equal to the rural sewage disposal recommendations of the Joint Committee on Rural Sanitation*, and properly operated and maintained, so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply. Separate toilet facilities for each sex shall not be required where family shucking is carried on and satisfactory toilet facilities are available for family use in the home or conveniently located with respect thereto.

Public Health Reason: The organisms of typhoid fever, dysentery and of other diseases are present in the body wastes of persons sick with such diseases. In the case of typhoid fever, well persons (carriers) may discharge the organisms in their body wastes. If a toilet is not fly-tight and so constructed as to prevent overflow, infection may be carried from the excreta to the shucked shellfish by flies or through the pollution of the water supply used in processing the shellfish or the water in which the shellfish are grown.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) There are separate flush toilets for each sex, conveniently located in the plant, the wastes from which are disposed of in a manner satisfactory to the State health authorities. (The requirements of separate toilets for each sex does not apply in the case of a family shucking plant located in the immediate vicinity of a home providing satisfactory facilities.)

(2) The toilets do not open directly into the shucking or packing room.

(3) The toilets are constructed, operated and maintained in accordance with plans and instructions of the local and State authorities.

(4) At least one water closet and one urinal are provided for every 30 male employees and at least one water closet is provided for every 20 female employees.

(5) A pit privy, chemical toilet or other type of privy is provided, constructed and operated in accordance with plans and instructions of the State board of health in those States permitting the use of these types of toilets.

(6) There is no evidence of human defaction or urination about the shucking house premises except in the toilets provided for these purposes.

(7) Facilities are maintained in proper operating condition, the toilet room is kept

* Rural Sewage Disposal—Recommendations of Joint Committee on Rural Sanitation—Reprint No. 2461 from the Public Health Reports 1943, 32 pages. Can be obtained from the Superintendent of Documents, Washington, D. C.

clean, equipped with self-closing doors, has no offensive odors, and if there is an adequate supply of toilet tissue available in the toilets.

4.12 Handwashing facilities.

An adequate number of lavatories with running hot and cold water shall be provided and preferably so located that their use by plant personnel can be readily checked. A supply of soap and individual towels shall be provided at all times and the facilities shall be maintained in proper operating condition. Signs shall be posted in the toilets and over the lavatory warning the employees to wash their hands thoroughly with hot water and soap and no employee shall return from a toilet to work in the plant without first having washed his or her hands.

Public Health Reason: Washing facilities and sanitary towels are essential to the personal cleanliness of food handlers.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

- (1) There is at least one lavatory for every 20 employees.
- (2) The handwashing facilities are so located that the person responsible for supervision can readily observe that employees wash their hands before beginning work and after each interruption.
- (3) The lavatories are provided with both hot and cold running water.
- (4) There is a supply of liquid or powered soap and proper dispensing facilities, together with individual towels available near the lavatory.
- (5) The facilities are maintained in proper operating condition.
- (6) Appropriate signs are posted in toilets and over lavatories.
- (7) These facilities (and only these) are used by employees when on duty.

4.13 Water supply.

The plant shall be provided with an abundant supply of water, under pressure, from a source approved by the State health authorities. The supply shall be accessible to all parts of the plant, adequate in quantity, and of a safe sanitary quality meeting the Public Health Service Standards. No cross connections with unapproved water supplies shall be permitted.

Public Health Reason: The water supply should be accessible so as to encourage its use in cleaning operations; it should be adequate so that cleaning, rinsing, and sterilizing of the equipment will be thorough; and it should be of safe, sanitary quality in order to avoid the contamination of the equipment and shellfish.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

- (1) The water supply is easily accessible to all parts of the plant, and is adequate for all purposes.
- (2) A hot water supply of adequate capacity is provided.
- (3) The water supply is approved by the State health authorities.
- (4) There is no connection between the same water supply and water from an unsafe source through which it is possible to contaminate the safe water supply.
- (5) At least one inspection is made per year to determine whether the location, construction, and operation of the supply comply with State health department requirements. Bacteriological results on samples of water shall comply with the Public Health Service Drinking Water Standards.

4.14 Personnel.

No person known to be affected with any disease in a communicable form, to be a carrier of such disease, or who has infected wounds or open lesions on the exposed portions of the body shall be employed in a shucking or packing plant. If the owner or manager has reason to suspect that any employee has contracted a communicable disease he shall immediately notify the proper health officials who will take such action as may be indicated. Pending such action by the health officials or the recovery of the employee, said employee shall be excluded from the plant.

Public Health Reason: Persons who are infected with, or carriers of organisms of typhoid fever, dysentery, septic sore throat, or certain other communicable diseases might transmit it to others through shucked shellfish. Persons with infected wounds or open lesions on the exposed portion of their bodies might likewise transmit the infecting organisms to the shucked shellfish and cause so-called food poisoning of the consumers.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

- (1) Persons with infected wounds or open lesions on the exposed portion of their bodies and those who are known to be carriers of or infected with typhoid fever, dysentery or

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other communicable diseases likely to be transmitted by shucked shellfish are excluded from the plant.

(2) Daily observations of employees are made by owner or manager with reasonable inquiries when one appears ill.

(3) The inquiry indicates the possibility of a communicable disease, the ill employee is excluded from the plant pending clearance by the health officials or the recovery of the employee.

(4) The inquiry leads to the suspicion of a communicable disease, a prompt report is made to the proper health officials.

(5) Action is taken by the proper health officials upon receipt of such report.

(6) Employees having diarrhea or sore throat promptly report this fact to the manager.

4.15 Supervision.

The management shall designate an individual to be responsible for the compliance with those sections of this Manual having to do with plant cleanliness, personnel and operation.

Public Health Reason: The importance of handwashing by food handlers is great and unless someone is made responsible for this process, it is apt to be forgotten or overlooked. Satisfactory cleaning of the shucking room does not follow if the responsibility for the condition of the shucking room is divided among two or more persons. Clean floors, walls, and benches reduce the chances of contamination of the shellfish or shucking utensils during shucking operations. Daily cleaning of all surfaces will prevent mud from becoming dry and caked making it difficult to remove. Periodic disinfection and the removal of accumulated contamination, will reduce the possibility of contaminating the shellfish passing through the shucking room.

Careful daily observation of the health of employees with proper inquiries when indicated and with exclusion of ill employees will tend to prevent possible contamination of the shucked stock with pathogenic organisms.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

A single individual has been designated by the management to supervise the activities above enumerated and if there is evidence that he has been carrying on his responsibilities satisfactorily.

Shucking Room Equipment:

4.16 Shucking benches and stands.

The tops of shucking benches and the sides above the bench tops shall be of smooth concrete, free from cracks or crevices and so constructed that drainage is complete and rapid. Shucking blocks shall be removable unless an integral part of the bench and shall be of solid one-piece construction. The stands or stalls shall be of finished material and painted where hand contact occurs. There shall be no boxes, shelves, or nails above the benches where miscellaneous articles might accumulate.

Public Health Reason: Unless shucking benches, stands, blocks, and stalls are made of smooth material which can be cleaned easily, they will become very foul and materially affect the shellfish quality. Storing or hanging articles above shucking benches is undesirable because of the chance that some article will fall into the shucked shellfish and because their presence interferes with thorough cleansing of the benches and adjacent walls.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The shucking benches are of smooth concrete, free from cracks or crevices which might hold putrescible matter and are maintained in a clean condition.

(2) The benches drain completely and rapidly.

(3) The shucking blocks are removable, or an integral part of the bench and are of solid, one-piece construction.

(4) The stands or stalls are of finished material and painted where hand contact occurs.

(5) There are no boxes, shelves, wires, or nails above the benches where shuckers gloves, fingercoats, knives, or miscellaneous articles might accumulate.

4.17 Pails.

All shucking pails or colanders shall be made of a not-readily corrodible, smooth, impervious material and shall be constructed in such a manner as to eliminate grooves, seams, and cracks, where foreign particles, dirt, and slime might collect. All seams and joints shall be well filled with solder and dressed to a smooth surface. If "dip buckets" are used they shall be of the same quality as shucking pails.

Public Health Reason: Shellfish containers and other utensils unless so constructed as

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to have flush joints and seams, smooth, easily cleaned, and accessible surfaces, and of durable non-corrodible metal are liable to harbor accumulations in which undesirable bacteria will grow.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All containers, pails, colanders, and similar equipment are constructed of smooth metal with a not-readily corrodible surface, of a shape that will make cleaning easy, and with all joints and seams soldered smooth.

(2) All containers, pails, colanders, and similar equipment are in good repair, free of breaks and corroded places. The use of agate-ware, rusted or dented pails is not acceptable.

4.18 Knives and blocks.

Knives shall be made of not-readily corrodible, smooth, impervious material, and shall be constructed in such manner as to eliminate grooves, joints and cracks where food particles and dirt might collect. The handles of opening knives and the breaking blocks shall be so constructed as not to have cracks and crevices which would retain food particles, dirt, and slime.

Public Health Reason: Knives, breaking blocks, and breaking irons containing joints and cracks are not easily cleaned and are apt to harbor accumulation of slime and other material in which undesirable bacterial growth can occur.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

All opening knives, breaking blocks, and breaking irons are constructed and maintained in such manner that there are no open joints, seams, or cracks in which material may accumulate.

4.19 Aprons and finger cots.

All persons who handle shucked shellfish shall wear a clean apron or coat of washable or waterproof material which shall be kept reasonably clean. If finger cots are worn they shall be of clean washable or waterproof material. Similar shields for protecting the palm of the hand shall be of clean washable or waterproof material, preferably rubber.

Public Health Reason: Because the hands of all employees frequently come in contact with their clothing, it is important that the clothes worn during the handling of shucked shellfish be clean. The nature of their work makes it necessary that they wear some outer garment to cover the front of the clothing. This garment must be washable or waterproof. Finger cots unless kept clean become saturated with dirt which in turn contaminates the shucked shellfish.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Washable or waterproof aprons or coats are worn by all persons engaged in handling shucked shellfish.

(2) Aprons and coats are kept reasonably clean and are stored in a place provided for the purpose.

(3) Finger cots, if worn, are of clean, washable, or waterproof material.

Operation

4.20 Cleaning.

All utensils used in shucking, such as pails, knives, hammers, shucking blocks, and breaking irons, which come in contact with shucked shellfish, shall be thoroughly scoured until clean immediately following each day's operations. Shucking pails shall be rinsed with running water before each filling. The practice of returning shucked shellfish to the shucker after delivery to the packing room should not be permitted. Floors, walls, and benches shall be washed free from accumulations of mud, shells, and shell chips with water within two hours after shucking operations for the day have ceased.

Public Health Reason: Shucked shellfish cannot be kept clean if allowed to come in contact with unclean containers or utensils or if container or utensils are allowed to come in contact with dirty surfaces such as bench tops and the like.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All utensils and equipment such as pails, knives, hammers, shucking blocks, and breaking irons are thoroughly scoured until clean, using warm water and soap or an alkali cleanser.

(2) Cleansing is performed within two hours after the day's operation has ceased.

(3) The plant supervisor is held responsible for the satisfactory cleaning of this equipment.

(4) Shucking pails are rinsed with running water before each filling.

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(5) "Dip buckets," if used, shall be rinsed and the water renewed each time the shucker delivers shucked shellfish to the packing room.

(6) Floors, walls, and benches are washed free from accumulation of mud, shells, shell chips, and so forth with water from an approved source within two hours after shucking operations for the day have ceased.

(7) After having been thoroughly cleaned, benches, blocks, and stalls are flushed at least once each week with hypochlorite solution containing 50 parts per million or more of available chlorine or other disinfecting agent approved by the State regulatory authority.

4.21 Bactericidal Treatment.

All utensils used in shucking, such as pails, knives, hammers, breaking irons, "dip buckets," etc., which come in contact with shucked shellfish shall be subjected to bactericidal treatment after thorough cleansing within three hours of the termination of each day's operations and be stored in a place where they are protected from contamination until used. Equipment so treated shall be protected from recontamination in storage, otherwise the sterilizing efforts will be of no avail.

Public Health Reason: Regular periodic sterilization of all equipment will remove any chance contamination which may have reached the equipment since it was last sterilized. The importance of destroying any disease-producing organisms which may have reached the equipment is obvious, since such organisms may in turn contaminate the shellfish. The possibility that the organisms may increase in number in the shucked shellfish increases the danger.

Satisfactory Compliance: This item shall be deemed to have been satisfied if all the utensils and equipment such as pails, knives, hammers, and breaking irons have been:

(1) Exposed in a steam cabinet for at least 15 minutes to a temperature of at least 170° F. or for at least five minutes to a temperature of at least 200° F., said cabinet being equipped with an indicating thermometer located in the coldest zone; or

(2) Immersed in hot water at a temperature of 170° F. or more for at least two minutes; or

(3) Exposed to hot air at a temperature of 180° F. for at least 20 minutes in a properly designed oven or hot-air cabinet equipped with an indicating thermometer located in the coldest zone; or

(4) Immersed in or exposed to a flow of chlorine solution prepared fresh each day for a period of at least two minutes. The initial strength of the solution shall be such that after use it will contain not less than 50 parts per million chlorine.

AMOUNTS OF CHLORINE COMPOUNDS REQUIRED TO GIVE APPROXIMATELY 100 PARTS PER MILLION CHLORINE BY READILY AVAILABLE MEASURING DEVICES

Volume of Water Gallons	Dry Chlorine Compounds Available Chlorine			Liquid Hypochlorite Solutions Available Chlorine	
	15%	25%	70%	1%	5%
20	5-1/2 tbs.	3-1/2 tbs.	1-1/2 tbs.	3 cups	10 tbs.
40	11 tbs.	6-1/2 tbs.	2-1/2 tbs.	3 pints	1-1/4 cup
60	1 cup	10 tbs.	3-1/2 tbs.	4-3/4 pints	2 cups
80	1-2/5 cup	13-1/2 tbs.	4-1/2 tbs.	6-1/2 pints	2-1/2 cups
100	1-4/5 cup	1 cup	6 tbs.	4 quarts	3 cups
150	2-3/4 cup	1-1/2 cup	9 tbs.	6 quarts	4-3/4 cups
200	3-3/5 cup	2 cups	12 tbs.	2 gallons	3 pints

NOTE:

Dry Measure

1 tablespoon (tbs.)—approx. 0.3 oz.
1 cup (1/2 pint)—approx. 5 oz.

Liquid Measure

1 tbs.-3 tsp.—approx. 15 ml.
1 cup-1/2 pint—approx. 16 tbs.

4.22 Other bactericides.

The inspector should not approve the use of any other form of bactericide until he has satisfied himself by his own or other official tests that it is satisfactory for use in connection with shellfish sanitation, and that it is of adequate strength. The local inspec-

tor should consult his State board of health regarding all bactericides in use in his territory, so that he may be certain he is using the proper test. Under no circumstances shall formaldehyde or other preservatives be used where such preservatives will come into contact with shellfish meats.

4.23 Cabinets with auxiliary steam boilers.

In medium and large shucking plants a steam cabinet with auxiliary steam boiler is the most satisfactory type of equipment for bactericidal treatment of utensils and equipment.*

4.24 Hot water sterilization.

Use of hot water for bactericidal treatment shall not be accepted as satisfactory compliance unless the articles are completely immersed for at least two minutes in water maintained at 170° F. or higher throughout the period of immersion. Pouring hot, or so-called "boiling water", from vessel to vessel is not adequate and shall not be accepted.

Sterilization with hot water can be accomplished in a vat. The vat should have sufficient depth to allow the complete immersion of at least one shucking bucket.

An indicating thermometer should be available in every plant so that the water temperature can be noted during the sterilization process.

4.25 Storage of equipment.

All equipment used in the shucking process, including shucking pails, "dip buckets," knives, breaking blocks, finger cots, etc., shall be left in steam cabinet or stored in other suitable place in the plant after cleansing and bactericidal treatment.

Public Health Reason: Unless equipment that has been subjected to cleansing and bactericidal treatment is protected from contamination until it is used, it may easily become contaminated and in turn contaminate the shucked shellfish. Equipment taken home by shuckers may easily be exposed to material which might cause illness, especially in homes where cases of infectious diseases may be found.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

All equipment used in the shucking room is stored in a suitable box or locker protected from careless handling and from dust, splashing, dirt, and other contamination.

4.26 Shell disposal.

Shells from which meats have been removed shall be promptly removed from the shucking room and disposed of so that the shucked product can in no way become contaminated.

Public Health Reason: When shells are allowed to accumulate in the shucking room, conditions are created which make it difficult to keep the room in a neat and clean condition. Under such conditions the shucked product is more apt to become contaminated than if the shucking room is kept clean, neat, and orderly.

Satisfactory Compliance: This item shall be deemed to have been satisfied if the shells are removed from the shucking room with sufficient promptness to prevent interference with the sanitary operation of the plant. Among the methods approved for the removal of shells are the following:

(1) Disposition through a hole in the shucking bench leading to the area beneath the bench which is closed off from the shucking room and open to the outside of the house.

(2) Depositing the shells on moving conveyor belts which continuously remove the shells from the shucking room.

(3) Depositing the shells in baskets, barrels, or wheelbarrows provided beside each shucker, such baskets, barrels, or wheelbarrows to be promptly removed when full.

4.27 Miscellaneous.

Miscellaneous equipment not necessary to carry out the shucking processes shall be excluded from the shucking room. All unused or abandoned equipment or material foreign to this particular business shall be removed from the operating part of the plant. All domestic animals and rodents shall be excluded from all parts of the plant. The shucking and packing portions of the plant, when in operation, shall be restricted to the handling of shellfish to prevent accumulation of material and articles which would hinder cleaning or might contribute to the contamination of the shellfish.

Public Health Reason: The presence of miscellaneous and extraneous equipment and

* Detailed directions for the construction and operation of a steam cabinet may be obtained from the State Regulatory Authority. Directions for the construction of such a cabinet is given on pages 66 and 67 of Public Health Bulletin No. 220 (1939 Edition), Milk Ordinance and Code obtainable from the Superintendent of Documents, Washington, D. C.

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material in the shucking room interferes with the proper cleansing of the room and equipment, and its presence may result in contaminating the food product handled in the shucking room. The habits and characteristics of the dog, cat, rat, or other domestic animals or rodents are such that their presence near shell stock or shucked stock increases the possibility of it being contaminated.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All equipment and material not actually employed in the shucking process are excluded from the shucking room.

(2) The shucking and packing portions of the plant are not used simultaneously for the handling of shellfish and the carrying on of other operations.

(3) There is no accumulation of miscellaneous articles in the plant not stored in their proper place.

(4) There is no evidence of the presence of domestic animals and rodents.

(5) No shellfish containers or equipment are stored, handled, or used beneath overhead sewer, water, or drain lines unless such pipes are provided with suitable means of carrying off possible leakage or condensation.

Packing and Shipping Room Equipment

4.28 Utensils (Skimmers, blowers, and so forth).

All packing equipment such as skimmers, tanks, tubs, measures, colanders, paddles, and so forth shall be made of a not-readily corrodible, smooth, impervious material and constructed in such a manner as to eliminate grooves, seams, and cracks where foreign material and slime might collect. All seams and joints shall be well filled with solder and dressed to a smooth finish. A stand or shelf shall be provided under all chutes from skimmers or blowers to support a measure or can. The surfaces of skimmers, blowers, tubs, tanks, and other utensils with which shucked shellfish come in contact shall be free of paint and rust. The air pipes in the blower shall be removable or so located that cleaning is not difficult. The portion of the air pipes below the tank liquid level shall be of smooth, not-readily corrodible, impervious material. There shall be a sterilization connection of adequate size to the air line of the blower above the tank liquid level by which steam or hot water may be forced through the line.

Perforations in the skimmers, colanders, and blower trays shall be smooth to facilitate cleaning. Skimmers, ladles, and colanders of wire mesh construction are not permitted. Several types of blowers have narrow and deep compartments along their sides or at corners, separated from the main part of the blower by a perforated plate. The area thus formed is very difficult, if not impossible, to clean and offers an ideal place for dirt and slime to collect. Where this occurs the plates should be removed or the space tightly sealed from the main part of the tank.

Pipes should be supported at a sufficient distance above the bottom of the tank to allow easy passage of a brush between the pipes and tank bottom.

Air pump intakes should be protected against contamination.

Shallow tanks and tubs should be elevated by legs, by a table, or by a bench to raise the top rim at least three feet above the floor.

Tables and shelves shall be made of materials that can be cleaned readily.

The washing of shellfish by "blowing" is not always necessary and in many instances produces an inferior product. Where "blowing" is practiced, attention is directed to the requirements of the United States Food and Drug Administration promulgated to prevent adulteration of shucked stock.

Public Health Reason: Containers and utensils which have joints and seams, inaccessible surfaces, and are constructed of non-durable or non-corrodible metal, are apt to harbor accumulations in which undesirable bacterial growth is produced. Paint on surfaces may peel on being exposed to continuous wear and the peeled paint enter the packing can with the shellfish. The slime and foreign material which accumulates in air pipes and blowers below the tank liquid level affords an excellent breeding place for bacteria which at each blowing may be dislodged and forced into the batch of shucked shellfish then in the blower, thus seeding the shellfish with organisms which may cause their spoilage or produce illness in consumers.

Tables and shelves unless made of materials that can be cleaned readily will not be cleaned properly and may harbor accumulations in which undesirable bacterial growth is produced.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

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(1) All multi-use containers, utensils, and other equipment are constructed of smooth metal with a not-readily corrodible surface, of a shape that will make cleaning easy, and with all joints and seams soldered smooth.

(2) All multi-use containers, utensils, and other equipment are in good repair, free of breaks, and corroded places.

(3) A stand or shelf located about two feet above the floor is provided under all chutes from skimmers and blowers.

(4) The surfaces of equipment coming in contact with shucked shellfish are free of paint and rust.

(5) Air pipes in blowers can be removed readily.

(6) The entire blower line below the liquid level can be easily cleaned.

(7) There is a connection to, or a removable section in, the blower line, above the liquid level of the tank, where steam or hot water can be introduced.

(8) Tables and shelves are made of materials which can be cleaned readily.

(9) Air pump intakes are so located as to be protected against contamination.

4.29 Shipping containers—Sealing.

Shucked shellfish shall be packed and shipped either in single-service containers made of clean impervious materials positively sealed or in such containers so sealed that tampering can be detected.

Metal or paper shipping containers shall not be reused by the shellfish industry. (See 4.38)

The Packers Certificate Number preceded by the State abbreviation shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container or on the cover if the cover becomes an integral part of the container during the sealing process. The date of shucking either in code or on-code shall be impressed, embossed, or otherwise permanently recorded on the container.

Public Health Reason: Unless shucked shellfish are packed in clean containers and sealed so that they cannot be tampered with while enroute to the final point of destination, all precautions taken to produce a clean and safe product prior to packing may be wasted. The opening of containers of shucked shellfish by intermediate handlers may subject this food product to needless and possible filthy handling, destroying the good arising from careful and judicious processing. The approximate number of shucked shellfish in any container can be stated on a label or elsewhere so that inspection for this purpose will not be necessary. Dating the container is necessary to facilitate tracing the product to its source.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Shipping containers are of metal, waxed paper, glass, or other material of such design that after sealing, opening the container or tampering with the seal will be evident.

(2) All shipping containers are clean when packed.

(3) All shipping containers are stored in a clean place.

(4) Packers certificate number and date of shucking are impressed, embossed, or otherwise permanently recorded on the container or an integral part thereof.

(5) No returnable containers are used. (See 4.38)

4.30 Refrigeration facilities.

Shucked shellfish shall be cooled to a temperature of 50° F. or less within two hours after the shellfish are shucked and shall be kept at or below that temperature until delivered to the consumer. If shucked shellfish are frozen they shall be kept in a frozen condition until delivered to the consumer.

Where a refrigerator or ice box is used, it shall have adequate capacity to store all shucked stock received by or packed in the plant during the day. The refrigerator or ice box should be well insulated and have an impervious lining; the floor should be graded to drain quickly; and a thermometer shall be kept in the refrigerator at a point predetermined to have approximately the highest temperature.

Public Health Reason: Shucked shellfish are an excellent medium for the growth of bacteria at temperatures above 50° F. and it is essential that the temperature of shucked shellfish be kept below 50° F. in order to keep bacterial multiplication to a minimum. The likelihood of contracting disease is much increased when shellfish contain excessive numbers of harmful bacteria and for this reason it is extremely important that they be quickly cooled so that any small numbers of bacteria which may have entered shall not be

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permitted to multiply. High temperature may also be responsible for physical deterioration and spoilage of shucked stock. Alternate freezing and thawing of shellfish hastens deterioration and spoilage which may cause illness in the consumer.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Shucked shellfish are cooled to a temperature of 50° F. or less within two hours after being shucked, but are not frozen, and are stored in crushed ice in a clean, well-drained bin, chest, or ice box or in a refrigerator free from excessive odors; or if

(2) The shucked shellfish are packed in packages in which they will reach the ultimate consumer, unopened, and are quickly frozen and stored at below freezing temperature until delivered to the consumer.

4.31 Ice.

Ice used in cooling water for processing of shucked stock or for cooling shucked stock during processing shall be obtained from an approved source and shall be stored and handled in a cleanly manner. No ice shall be allowed to come in contact with shucked stock after processing has been completed.

Public Health Reason: There is the possibility of ice becoming contaminated during the manufacturing process and in the storing and handling subsequent to manufacture.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Ice is manufactured from water meeting the bacteriological requirements of the Public Health Service Drinking Water Standards or is approved by the State regulatory authority.

(2) Ice is stored in such manner that it will not come in contact with floor or other drainage.

(3) Ice is thoroughly washed before being placed in blowers, tanks, tubs, buckets, or cans, in which shucked shellfish are subsequently placed.

(4) All materials employed in handling and preparing the ice for use are used for no other purpose and are kept clean.

4.32 Bactericidal treatment facilities.

Facilities for bactericidal treatment of packing equipment such as skimmers, tanks, tubs, measures, colanders, and paddles, which come in contact with shucked shellfish, shall be provided.

Public Health Reason: Mere cleaning of utensils and equipment does not insure that all disease-causing organisms which may have been present will have been removed or destroyed. Even very small numbers thus remaining may grow to dangerous proportions if transferred to shucked shellfish.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

Facilities are provided for adequate bactericidal treatment of skimmers, tanks, tubs, measures, colanders, and paddles. Such treatment will be considered to be adequate if the articles above enumerated have been exposed to one or more of the bactericidal treatments described in 4.21.

4.33 Clothing and aprons.

Persons working in the packing room shall wear clean outer garments protected with clean water-proof or washable aprons or coats. When manual handling of shucked shellfish which have received their final washing becomes necessary, clean rubber gloves shall be worn, or the hands shall be washed before such manual handling.

Public Health Reason: Because the hands of all employees frequently come in contact with their clothing it is important that the clothes worn during the handling of shucked shellfish be clean. The nature of their work makes it necessary that they wear some outer garment to cover the front of the clothing. This garment must be washable or waterproof.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Washable or waterproof aprons or coats are worn by all persons engaged in handling shucked shellfish.

(2) Aprons are kept scrupulously clean.

(3) All aprons and clothes are stored in a cloak room or locker room provided for this purpose.

(4) Rubber gloves, if used, are bactericidally treated and then stored with the utensils so treated.

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4.34 Cleaning (Utensils and building).

The floors, walls, and if necessary the ceiling of the packing room shall be cleaned at the end of each day's operations and flushed with water meeting the Public Health Service Drinking Water Standards. Windows and skylights should be kept clean. Refrigerators or ice boxes shall be washed out once a week or more often if necessary. All packing equipment, such as skimmers, tanks, tubs, measures, colanders, and paddles, which come in contact with shucked shellfish, shall be thoroughly scoured until clean at the end of each day's operations. Air pipes in blowers shall be removed daily at the end of packing operations and their interior and exterior surfaces be thoroughly cleaned.

Public Health Reason: Clean floors, walls, and ceiling reduce the chances of contamination of shucked shellfish during the time they are being washed and packed. Periodic cleaning of the refrigerators or ice boxes is necessary to remove dirt or foreign material from the walls and floor which might be carried into the room by foot traffic and by ice, and to reduce odors which might result in a confined space. Shucked shellfish cannot be kept clean if allowed to come in contact with unclean containers or utensils.

Satisfactory Compliance: This item shall be deemed to have been satisfied if

(1) The floors, walls, and ceiling of the packing room are free from accumulations of dirt and other wastes except those which have accumulated since the beginning of the day's operation, provided such accumulation is removed within two hours after packing operations have ceased.

(2) All dirty surfaces have been flushed with water meeting the Public Health Service Drinking Water Standards, after accumulations have been removed.

(3) Windows and skylights are clean.

(4) The refrigerator or ice box is clean and free from excessive odors.

(5) All utensils and equipment such as skimmers, tanks, tubs, measures, colanders, and paddles are thoroughly scoured until clean, using warm water and soap or an alkali cleanser.

(6) Cleaning is performed within two hours after the day's operations have ceased.

(7) Air pipes in blowers are removed daily at the end of packing operations and their interior and exterior surfaces are thoroughly cleaned.

4.35 Bactericidal treatment.

All packing room equipment such as skimmers, tanks, tubs, measures, colanders, and paddles, which come in contact with shucked shellfish, shall be sterilized after cleansing.

Cleansing and sterilizing operations shall be carried on within three hours of the terminating of each day's operation and equipment be stored until used in a place where it will be protected from contamination. Large equipment which cannot be stored in a protected place shall be cleaned at the end of each day's operation and be subjected to bactericidal treatment immediately before use.

Public Health Reason: Since mere cleansing of utensils and equipment with which shucked shellfish come in contact does not insure that all disease organisms which may be present will have been removed or destroyed, it becomes necessary to apply bactericidal treatment to such equipment. Even very small numbers of organisms may be sufficient to seed packed shellfish and grow to dangerous proportions before being consumed.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

The articles above enumerated have been subjected to one or more of the bactericidal treatments described in 4.21, in accordance with the satisfactory compliance requirements stated therein.

4.36 Equipment storage.

All equipment with which shucked shellfish in the packing room come in contact shall, after thorough bactericidal treatment, be stored in such manner as will protect it from contamination before it is again put to use.

Public Health Reason: All of the precautions taken in sterilizing equipment may be undone by improper storing of the equipment following treatment.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The equipment is stored in a cabinet where it will be protected from dust, drippings, splashings, flies, rodents, domestic animals, or handling. The utensils may remain in the steam chest in which sterilization has taken place or in the hot water vat or tank in which bactericidal treatment has been applied if they are fully protected from contamination prior to use, or

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(2) Stored in the packing room on clean shelves, stands, tables, or wires if the packing room is locked so as to exclude all unauthorized persons.

4.37 Packing shucked stock.

Shucked shellfish shall be packed in containers dated and sealed (4.29) and if they have not been subjected to a quick-freeze process they shall be kept at a temperature between 32° F. and 50° F. After tub washing or blowing, the washed shellfish shall not be returned to the skimmer which is used for handling the freshly shucked stock.

Public Health Reason: Unless shucked shellfish are packed in containers which are sealed after packing, they may be opened by unauthorized persons and become contaminated. Unless shucked shellfish are kept at low temperatures until they reach their destination, undesirable bacterial growths, which may result in their spoilage and thus cause illness, may take place. Use of a receiving skimmer for packing purposes increases the possibility of contaminating the prepared product by dirt and other material left on the receiving skimmer by the freshly shucked shellfish.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Shucked shellfish, not subjected to quick-freeze process, are sealed in containers and stored and shipped in such manner as will hold their temperature between 32° F. and 50° F. If subjected to quick-freezing process the temperature shall be held at 10° F. or lower.

(2) Shellfish are not exposed to a receiving skimmer after having been washed.

4.38 Repacking shucked stock.

The packing of shucked shellfish shall take place only in the plant in which they are shucked. No repacking permitted.

4.39 Packing and shipping shell stock.

The washing of shell stock, when necessary, should be done either with water obtained from sources approved by the State regulatory authority or from approved shellfish areas. All shell stock, except that consigned to a shucking plant, shall be packed and shipped in clean containers such as barrels, bags, crates, or boxes under conditions which will prevent spoilage or contamination. When consigned to shucking plants in bulk, shell stock may be packed and shipped in such vehicles as clean railroad cars, trucks, and boats, under conditions which will prevent spoilage or contamination. Storage facilities should be at least equal to those described in 4.4. A dealer holding a certificate for shell stock only, or as a reshipper, shall not shuck any shellfish.

Public Health Reason: If shellstock are washed in polluted water, the shellfish may become contaminated. If spoilage or contamination is not prevented, illness and possible death may result from the consumption of such shellfish. The establishment of a dealer holding a certificate for shellstock only or as a reshipper is not required to meet the provisions set forth in this manual for shucking plants; if shellfish are shucked in this type of establishment, the shucked stock is more likely to become contaminated and cause disease because adequate facilities and equipment are not available to permit cleanly shucking.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Water for washing shellstock is obtained from shore sources approved by the State regulatory authority or from approved shellfish areas.

(2) Shipping containers such as boxes, barrels, crates, and bags, and vehicles used in transportation such as railroad cars, trucks, and boats are clean.

(3) Trucks and other conveyances are covered and the shellfish therein maintained at temperatures which will keep them alive yet prevent them from freezing.

(4) Shellfish are not shucked by a dealer holding a certificate for shell stock only or as a reshipper of shell or shucked stock.

(5) Dry storage facilities are at least equal to those described in Section 4.4.

4.40 Identification of shell stock on the market.

Shell stock shall be identified by a tag or label securely fastened to the shipping container and bearing the certificate number of the shipper, his name and address, the name and address of the consignee, and the kind and quantity of shell stock in the container.

Public Health Reason: The prompt discovery and elimination of contaminated shellfish is necessary to protect the health of shellfish consumers.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Tags are securely fastened to all containers in which shell stock is shipped.

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(2) Tags are made of substantial stock, reasonably waterproof and at least 2-5/8" x 5-1/4" in size.

(3) The information on tags includes the name, address, and certificate number of the shipper, the name and address of the consignee, and the kind and quantity of shell stock in the container and either coded or uncoded the date the shellfish were taken from the water.

4.41 Records.

To permit tracing readily to the point of origin any shellfish on the market, it is necessary that complete and accurate records be kept by every shellfish dealer.

Public Health Reason: In case of an epidemic of disease attributable to shellfish, it is necessary that health departments be able to determine the source of contamination and thereby prevent any further epidemic from this source. This can be done most effectively by following the course of a shipment of shellfish through all the various dealers who handle it, back to the point of origin.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Shell stock dealers' records include the date, persons from whom purchased, quantity and kind of shellfish, and the dealers to whom sold.

(2) Reshippers record the dates and dealers from whom purchases are made and those to whom sales are made together with kind and quantity of shellfish involved.

(3) Shuckers record the dates and dealers from whom purchases are made or areas where shellfish are taken and persons to whom sold.

(In most cases, the record of the financial transactions of the plant constitute a sufficient record as defined in this section.)

Soft Drink Bottling Plants

(Filed Secretary of State's office July 18, 1947.)

Section 1. Definitions:

(a) The term "soft drink" as used in these regulations shall include all "carbonated beverage", "soda" or "sodawater", "still drinks", "fruit juices", "perishable fruit drinks", "root beers", and similar non-alcoholic beverages, carbonated or otherwise, or ingredients used in the preparation of same.

(b) The term "Bottling Plant" as used in these regulations shall include all establishments manufacturing, processing, or distributing, "carbonated beverage", "soda", "soda water", "still drinks", "fruit juices", "perishable fruit drinks", or "root beers", and similar beverages.

(c) The term "Person" shall mean person, firm, corporation or association.

(d) The term "Employee" shall mean any person in a bottling plant engaged in the mixing of syrups, filling of bottles, or in any other capacity which brings them in contact with the ingredients or containers of beverages.

(e) The term "Health Officer" within the meaning of these regulations shall mean the health authority of the cities, and/or the counties, and/or the state, or his authorized representative.

(f) The term "equipment" shall include all machinery, utensils, conveyors, bottles, cases, and other articles used in the manufacturing, processing, or distribution of soft drinks.

Section 2. Ingredients:

(a) **Sugar:** The sweetening agents employed in the manufacture of soft drinks shall consist exclusively of edible sugar such as sucrose, dextrose, invert sugar, and levulose, singly or in combination, or other suitable and nutritious carbohydrates.

(b) **Preservatives:** No antiseptic, disinfectant, or preservative prohibited by Federal or South Carolina Pure Food and Drug or health laws shall be employed in soft drinks.

(c) **Acids and Flavors:** Citric, tartaric, or other edible organic acids and their salts may be employed; mineral acids, other than phosphoric acid or its salts, shall be prohibited from soft drinks. Acids and flavors shall be stored in suitable containers, properly labeled, and protected against contamination.

(d) **Colors:** Only caramel, U. S. Certified coal tar, or other vegetable colors approved by U. S. Food and Drug Administration shall be employed.

(e) **Adulteration:** Soft drinks shall not be adulterated. Non-alcoholic drink shall be deemed to be adulterated: If it contains any boric acid or borate salicylic acid or salicylate, formaldehyde, hydrofluoric acid of fluoride, fluoborate, fluosilicate, or other

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fluorine compound, dulcin, glucin, saccharin, betanaphthol, hydronaphthol, abrastol, asaprol, compound of copper, pyroligneous acid, uncertified coaltar dye, saponin derived from soap bark, or other substance deleterious or injurious to health.

Section 3. Permits:

It shall be unlawful for any person to operate a bottling plant in the State of South Carolina who does not possess an unrevoked permit from the health officer. Such a permit shall be posted in a conspicuous place. Only persons who comply with the requirements of these regulations shall be entitled to receive and retain such a permit.

Such a permit may be temporarily suspended by the health officer upon the violation by the holder of any of the terms of these regulations, or revoked after an opportunity for a hearing by the health officer upon serious or repeated violation.

Section 4. Sanitation requirements for bottling plants:

Item 1. *Floors:* The floors in the syrup, and washing and bottling rooms shall be of concrete, tile or other impervious material with a smooth surface and maintained in a clean and sanitary condition. They shall be graded and sloped to properly trapped drains. The floors of storage and accessory rooms shall be of such construction as to be easily cleaned and shall be kept clean and in good repair at all times.

Item 2. *Walls and Ceilings:* The walls and ceilings in the syrup, and washing and bottling rooms shall be of hard, sound materials with smooth, easily cleaned surfaces, frequently painted a light color to aid in distribution of light, and maintained clean, and in good repair. The walls and ceilings of storage and accessory rooms shall be maintained clean and in good repair at all times.

Item 3. *Doors and Windows:* All openings to the outer air in the bottling, washing, and syrup rooms shall be effectively screened or otherwise protected where necessary against entrance of flies, or other insects.

Item 4. *Light and Ventilation:* All rooms shall be adequately lighted and ventilated.

Item 5. *Toilet Facilities:* Adequate and conveniently located toilet facilities shall be provided for employees, conforming with the rules and regulations of the State Board of Health. The toilet rooms shall not open directly into any room where soft drink manufacturing processes are carried on. The doors of all toilet rooms shall be self-closing; toilet rooms shall be kept clean, in good repair, and well lighted and ventilated. Hand washing signs shall be posted in each toilet room used by employees. In case privies are permitted and used they shall be separated from the bottling plant building, and shall be constructed and operated in conformity with the standards of the State Board of Health.

Item 6. *Water Supply:* Water under pressure shall be easily accessible to all parts of the bottling plant. The supply shall be adequate, and of a safe, sanitary quality, and shall meet all requirements of the State Board of Health as to drinking water. If a separate water supply is used for any purposes at the plant, there shall be no connection between that supply and the potable supply used for soft drink manufacturing. The non-potable water shall not be piped into the bottling plant. Electrical or chemical coagulation devices and filters employed for clarification of water shall be of types approved by the health officer, shall not be operated beyond their rated capacity, and shall be maintained in a clean and sanitary condition at all times. Sufficient potable water for backwashing filters shall be available.

Item 7. *Lavatory Facilities:* Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved sanitary towels. The use of the common towel is prohibited. All employees shall wash their hands before handling any soft drink ingredients or equipment used in preparation and bottling operations, and after each visit to the toilet.

Item 8. *Construction of Equipment:* Every bottling plant shall be equipped with necessary mechanical bottle washing apparatus and with approved machines for carbonating, filling, and crowning, so that these operations are performed in such manner as to prevent any part of the operator or his clothing from coming in contact with those surfaces of the bottle which come in contact with the soft drinks. Bottle washing machines shall be so constructed and operated as to prevent back siphonage or return flow into the water supply lines. All vats, jars, mixing and storage tanks, pipe lines, filters, and other apparatus employed in the preparation of syrups, shall be of sanitary construction and lined with materials resistant to the corrosive action of syrup ingredients.

All equipment used in connection with the operation of the bottling plant shall be so constructed as to be easily cleaned and shall be kept in good repair. All bottles or other

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soft drink containers shall be easily cleaned and shall be free of defects, breakage, cracks and discoloration. Pipe lines shall be of such lengths and removable so as to be easily cleanable.

Item 9. *Cleaning and Bactericidal Treatment of Equipment:* All pipe lines, equipment and containers employed in the manufacturing processes shall be thoroughly washed, cleaned and effectively subjected to an approved bactericidal process so as to be maintained at all times in a clean and sanitary condition. Steam, hot water, chlorine or other equally efficient agents are permissible for disinfection. Hand bottle washing, except as a preliminary to subsequent mechanical washing is prohibited. All bottles shall be thoroughly cleaned and disinfected, immediately before filling, by means of a suitable automatic mechanical washing machine.

Item 10. *Storage of Crowns and Equipment:* All bottles shall be stored in a clean dry place protected from flies, dust or other contamination. All stored bottles shall be re-washed immediately before filling. Crowns shall be stored in dust proof containers and protected from contamination. All other equipment shall be stored so as to be protected from contamination. Detergents, insecticides and similar products shall be stored so as to prevent contamination of soft drinks or ingredients. Sugar shall be stored in a dry place and protected against dust, moisture, insects and vermin, or other contamination.

Item 11. *Preparation and Storage of Syrups:* Syrups shall be prepared in a clean manner, and every precaution shall be taken against contamination or absorption of deleterious substances during the process of preparation and subsequent storage.

Item 12. *Preparation and Storage of Colors:* All non-alcoholic colors shall be prepared in small batches, stored so as to be protected against dust, and sterilized immediately before use.

Item 13. *Filling and Crowning:* Manual filling or crowning shall be prohibited. Bottles shall be filled and capped with automatic machinery and the operator or his clothes shall not come in contact with any portion of the bottle or machinery which might result in contamination of the product.

Item 14. *Storage of Finished Products:* The finished products shall be stored in such manner as not to interfere with the sanitation of the bottling room.

Item 15. *Disposal of Wastes:* Broken bottles and such other refuse and rubbish as may be found in returned cases, or which may accumulate at the bottling plant, shall be placed in suitable covered containers and disposed of properly. Liquid wastes shall be connected to the public sewer or as approved by the State Board of Health.

Item 16. *Cleanliness of Employees:* All persons engaged in the mixing of syrups, filling of bottles, or in any other capacity which brings them in contact with the ingredients or containers of soft drinks, shall be free from communicable disease, shall wear clean clothes and shall keep their hands clean at all times while engaged in the manufacture of soft drinks. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean.

Item 17. *Miscellaneous:* The building, or portion thereof employed for the manufacture of soft drinks, shall be used for no other purpose and shall be so located as to be protected from objectionable surroundings. The plant layout shall be such that the operations of bottle washing and filling, compounding and mixing of syrups, and shipping are performed in separate rooms. Where this is not feasible, the various operations shall be located in the available space in such manner as not to interfere with one another. The premises of all bottling plants shall be kept clean and free of litter or rubbish. All necessary insect and rodent control measures shall be effected. Animals shall be excluded from the bottling plant. Every bottling plant shall be adequately provided with thermometers, acid and sugar hydrometers, gas volume testers and apparatus for ascertaining the alkalinity and causticity of the soaker solution employed in bottle washing, and suitable tests for disinfecting agents used.

Section 5. Reinstatement of permit:

Any bottling plant, the permit of which has been suspended, may at any time make application for the reinstatement of the permit. Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision or provisions of these regulations have been conformed with, the health officer shall make a reinspection and thereafter as many additional re-inspections as he may deem necessary to assure himself that the applicant is again complying with the requirements, and, in case the findings indicate compliance, shall reinstate the permit.

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Section 6. Examination and condemnation of unwholesome or adulterated ingredients or drink:

Samples of ingredients, drink, and other substances may be taken and examined by the health officer as often as may be necessary for the detection of unwholesomeness or adulteration. The health officer may condemn and forbid the sale of, or cause to be removed and destroyed, any ingredients or drink which is unwholesome or adulterated.

Section 7. Enforcement interpretation:

These regulations are issued under the authority of the Code of Laws of 1942 and subsequent legislation. They shall be enforced by the Health Officer in accordance with interpretations and reasons which shall be provided by the State Board of Health.

Section 8. Penalties:

The penalties for violation of these rules and regulations are contained in Section 32-17 Code of Laws of South Carolina 1952.

Swimming Pools

(Filed Secretary of State's office February 17, 1944.)

Section 1. Classification of bathing places.

Bathing places may be divided into three classes:

- a. Natural outdoor ponds, rivers, tidal waters, etc.
- b. Outdoor pools which are partly artificial and partly natural in character.
- c. Pools, outdoor or indoor which are entirely of artificial construction.

Natural ponds and rivers are necessarily dependent upon natural flow or upon wind and wave action for circulation of the water. Artificial and partly artificial pools may be divided into four classes, according to the method by which water is obtained.

- a. Large semi-artificial pools in which the water cleanliness is maintained by natural flow or circulation.
- b. Fill and draw pools where cleanliness of water is maintained by complete removal and replacement of the water at periodic intervals.
- c. Flowing through pools where cleanliness is maintained by circulation of water through the pool from some natural or artificial source, but where the outflowing water is wasted.
- d. Recirculation pools in which the circulation of water is maintained through the pool by pumps, the water drawn from the pool being clarified by filtration before being returned.

Section 2. General principles of bathing place sanitation.

- a. All public bathing places, both natural and artificial, shall have the standard of cleanliness and bacterial purity of the water, and the precaution against the possible spread of disease as set forth in section 20.
- b. All artificial and semi-artificial pools, whether located indoors or outdoors, shall be so designed and have the necessary equipment to maintain cleanliness of the pool and maintain the same purity of the water with which the pool is filled.
- c. At all public bathing beaches on natural waters the same sanitary standards shall apply to bathing houses, dressing rooms, toilet facilities, and to the handling and care of bathing suits, towels and other bathing apparel.
- d. Sanitary drinking fountains with a supply of pure water shall be installed at all bathing places.
- e. The common use of towels, drinking cups, combs, hair brushes and other toilet articles is prohibited.

Section 3. Bathing beaches.

- a. The water at all public bathing beaches on natural streams, lakes and tidal waters shall be of the same standard and quality as is required for pools.
- b. The shore and bottom of a natural beach shall be covered with not less than 12 inches of good sand where the water is less than 6 feet deep, and shall be free from obstructions, swift and dangerous currents, no sudden drops, holes or submerged rocks, within the bathing area.

Section 4. Location and layout of the pool.

- a. The layout and entrances and exits in relation to dressing rooms, showers, and toilets should be such as to enforce proper routine of bathers. Coming from the dressing room a bather should be required to pass the toilet and go through the shower room before

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arriving at the pool entrance, and should leave the pool contrariwise. Entrances and exits should be located at shallow-water portion of the pool.

b. At pools used simultaneously by both sexes, separate entrances and exits shall be provided for men and women. There shall be no connection between the men's and women's quarters.

Section 5. Design and construction.

a. Material which will provide a tight tank with smooth and easily cleaned surfaces shall be used for artificial pools.

b. The pool shall be so designed that there will be complete circulation of water through all parts of the pool during bathing periods.

c. Artificial pools shall be so designed that the shallow water will be at one end and the deep water at, or near, the other end.

d. The deep portion of any pool shall not be less than 6 feet.

e. The slope of the bottom of any part of the pool where the depth of the water is less than 6 feet shall not be more than 1 foot to 15 feet. There shall be no sudden changes in depth within the area where the water is less than 6 feet.

f. The side and end walls on all artificial and semi-artificial pools shall be vertical.

g. In all artificial or semi-artificial pools the corners shall be rounded. The use of paint or similar material to obtain a light colored finish shall not be permitted.

Section 6. Proportioning pool area.

a. An area extending 10 feet from the extremity of a diving board or tower shall be considered as reserved for divers, and not more than 3 persons shall be permitted in the water in this area at one time when diving is in progress.

b. The requirements for adult swimmers is 36 square feet, and nonswimmers is 10 feet.

Section 7. Inlets and outlets.

a. All pools shall be provided with sufficient outlet at the deepest point of sufficient size to permit the complete emptying of the pool in 4 hours or less. Outlet openings in the floor shall be at least 4 times the area of the discharge pipe to reduce suction currents.

b. Inlets for fresh or re-purified water shall be so located as to produce, as far as possible, a uniform circulation of the water throughout the entire pool.

Section 8. Scum gutters.

a. All artificial pools shall have scum gutters completely around the pool. The design shall be such that the top of the gutter will be on a level and the inside on such a grade that all water going into the gutter will flow to the outlet.

b. The edge of the scum gutter shall be so constructed as to serve as a hand-hold for the bathers.

c. All scum gutters shall be recessed into the pool wall.

Section 9. Steps and ladders.

a. All steps and ladders shall be of such construction as to minimize danger of accidents. The tread shall be of nonslip material. All steps and ladders shall have hand rails on either side leading out over the runway.

Section 10. Runways and sidewalks.

a. There shall be a runway extending around the entire pool not less than 4 feet wide, of material which can be easily cleaned and of non-slip construction. This runway shall be so constructed that water cannot drain back into the pool.

b. The use of sand or grass for runways is not allowed.

Section 11. Dressing rooms.

a. Bath houses to be used simultaneously by both men and women shall be in two parts, one for each sex, entirely separated by tight partitions.

b. Floors of all dressing rooms and lockers shall be of smooth finish material, impervious to moisture, with no open cracks or joints; all floors shall have a pitch of at least one-quarter inch to the foot and shall slope to a proper drain to permit washing down with a hose. All junctions of the floors to side walls shall be finished with rounded joints.

c. All partitions between dressing compartments shall terminate not less than 4 inches from the floor to permit flushing of the entire floor area.

d. All dressing rooms and appurtenances shall be kept clean at all times. All lockers and floors shall be sprayed at frequent intervals with an insecticide and disinfectant.

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Section 12. Showers, toilets, and lavatories.

- a. Adequate shower bath facilities with both hot and cold water shall be provided at all artificial pools. The minimum number of showers provided shall be in the proportion of one for each 40 bathers.
- b. At public bathing beaches a sufficient number of showers shall be provided to permit all bathers to rinse off sand and dirt before entering dressing rooms.
- c. Adequate and proper toilet facilities for each sex shall be provided at all pools and beach bath houses. The minimum number shall be one toilet for each 40 women, and one toilet and one urinal for each 60 men.
- d. Water flush toilets shall be used, and where no sewer line is available, septic tanks of a type approved by the State Board of Health shall be installed.
- e. Lavatories located adjacent to toilets shall be provided at all swimming pools in the proportion of one for each 60 persons using the pool.

Section 13. Lighting, ventilation, and heating.

- a. A complete system of artificial lighting shall be provided for all pools, bathing beaches, bath houses, and dressing rooms which are to be used at night.
- b. Lighting fixtures shall be of such number and design as to light all parts of the pool and the water therein.
- c. Arrangement and design of lights shall be such that life guards may see clearly every part of the bathing waters at a beach or pool, and all spring boards, towers, floats, and other apparatus without being blinded by the light.
- d. All indoor pools and all bath houses, dressing rooms, shower rooms, and toilets at both indoor and outdoor pools and beaches shall be properly ventilated.

Section 14. Diving towers, springboards, and floats.

Diving towers shall be rigidly constructed and properly anchored. Fixed platforms and floats shall have an air space of at least a foot beneath. At least 12 feet free head room shall be provided above diving boards and towers. No diving board more than 10 feet above water level shall be permitted, and the following safe depths for diving are recommended: One foot platform, 5 feet; 3-foot platform, 6 feet; 5-foot platform, 7 feet; 7-foot platform, 8 feet; 10-foot platform, 9 feet.

Section 15. Emergency equipment.

- a. Pole hooks, ropes, buoys, and other necessary life-saving equipment shall be provided and be readily accessible at all pools and bathing places.
- b. A first aid kit containing aromatic ammonia, tincture of iodine, sterile gauze, absorbent cotton, surgeon's plaster and bandages of various widths shall be provided for emergency use at all public bathing places.
- c. At all beaches the bathing area shall be marked off by ropes or some other satisfactory markers.

Section 16. Suits, towels.

- a. At indoor pools used exclusively by men, nude bathing is required, and at indoor pools used exclusively by women, bathing suits shall be of the simplest type.
- b. All suits and towels shall be kept strictly separate from those which have been used and unlaundered. Clean suits and towels shall not be stored on shelves, handled in baskets or passed out over counters where soiled suits have been.
- c. All suits and towels shall be washed with soap and boiling water, rinsed and thoroughly dried each time they are used.

Section 17. Attendants.

- a. A swimming instructor, bathing master, or other qualified attendant shall be on duty at the pool site at all times when the pool is open to use by bathers. Such attendant shall have full charge of bathing and is authorized to enforce all rules of safety and sanitation.
- b. At all public beaches one or more life guards shall be on duty during all hours.
- c. No bather shall be permitted to enter the pool enclosure unless an attendant or other competent person is present.
- d. Whenever a pool is empty, entrance of all persons except pool attendants must be prevented.

Section 18. Personal regulations.

- a. All persons using a swimming pool shall, before entering a pool, take a shower bath.

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- b. Any person having any skin disease, sore or inflamed eyes, cold, nasal or ear discharges, or any communicable disease, shall not be allowed to use any public swimming pool.
- c. Spitting, spouting of water, blowing the nose, etc., in the pool is prohibited.
- d. Placards giving the above information shall be conspicuously posted in the pool room and enclosure.

Section 19. Chemical and physical quality of swimming pool water.

- a. All artificial pools are required to chlorinate the water entering the pool, and there shall be at all times, when the pool is in use, an excess of not less than 0.2 parts per million of available chlorine nor more than 0.5 parts per million.
- b. All swimming pool water where chlorine is used shall show an alkaline reaction and the pH shall not be less than 7.5 nor more than 8.3.
- c. At all times, when the pool is in use, the water shall be sufficiently clear to permit a black disk, six inches in diameter on a white field, when placed on the bottom of the pool at the deepest point, to be clearly visible from the sidewalks of the pool at all distances up to 10 yards, measured from a line drawn across the pool through said disk.

Section 20. Bacterial quality of swimming pool water.

Whenever streptococci bacteria is found in the water of any swimming pool or bathing place, the pool or beach shall be closed until the water is found to be free from this bacteria.

1. Indoor and outdoor artificial pools:

a. Total bacteria colony count—Not more than 1 sample out of any series of 5 samples of water, taken over any period of 2 weeks while pool is in use, shall show a total bacteria colony count of more than 200 per cubic centimeter of water.

b. Coli-aerogenes bacteria count—Not more than 1 sample out of any series of 5 samples of water, taken over any period of 2 weeks while pool is in use, shall show a count of more than 50 to 60 bacteria of the coli-aerogenes group per 1,000 cubic centimeters of water.

2. Ponds, lakes, streams, beaches—Not more than 1 sample out of any series of 5 samples of water, taken over any period of 2 weeks while bathing place is in use, shall show a count of more than 1,000 bacteria of the coli-aerogenes group per 100 cubic centimeters of water.

Section 21. Cleaning pool.

- a. Visible dirt on the bottom of a swimming pool shall not be permitted to remain more than 24 hours.
- b. Any visible scum of floating material on the surface of the pool shall be removed within 24 hours by flushing or other effective means.

Section 22. Bathing load limit.

The total number of bathers using a swimming pool during any period of time shall not exceed 20 persons for each 1,000 gallons of clean water added to the pool during that period. The term "clean water," as used above, is interpreted to mean new clean water used to refill the pool.

Section 23. Operating control.

- a. Tests shall be made by the orthotolodine test for excess chlorine at frequent intervals.
- b. Tests shall be made for alkalinity with a proper outfit for reading the pH of the water daily.

Section 24. Plans and specifications.

- a. No artificial swimming pool shall be built without the approval of the state board of health.
- b. Plans and specifications shall be submitted in duplicate showing the location and type of equipment to be used, and such plans and specifications shall be approved by the state health officer before construction is begun.

Section 25.

All swimming pools shall be inspected by the health officer, and if they do not conform to such rules and regulations, the public shall be notified.

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Trailer Parks

(Filed Secretary of State's office April 4, 1951 except as otherwise noted.)

Section 1. Definitions:

(a) "Trailer Park" means any trailer coach park, trailer camp, or any space where two or more trailer coaches are occupied for dwelling or sleeping purposes.

(b) "Permit" means a written permit, issued by the South Carolina State Board of Health, to operate a trailer park.

(c) "Health Officer" means the State Health Officer and/or the county or other local health officer and/or their duly authorized agents.

(d) "Person" means any individual, firm, association, trust, partnership, or corporation.

(e) "Trailer Coach" means any vehicle or similar portable structure having no foundation other than wheels, jacks or skirtings and so designed or constructed as to permit occupancy for dwelling or sleeping purposes.

(f) "Dependent Trailer Coach" means a trailer coach which does not have a toilet and a bath or shower.

(g) "Independent Trailer Coach" means a trailer coach that has a toilet and a bath or shower.

(h) "Trailer Coach Space" means a plot of ground within a trailer park designed for the accommodation of one trailer coach.

Section 2. Permits:

No person shall operate or maintain any trailer park within this State unless he is the holder of an unrevoked permit from the State Board of Health. All trailer coach parks in existence or operating upon the effective date of these regulations shall, within ninety days thereafter, obtain a permit, and in all other respects comply fully with the requirements of these regulations; PROVIDED, that the State Health Officer, upon adequate showing of necessity made by the person concerned, may, in his discretion, extend the time for compliance with any particular section hereof.

Application for a trailer park permit must be made in writing to the State Health Officer, signed by the applicant or his authorized officer or agent, and shall contain: (1) the name and address of the applicant; (2) the location and legal description of the trailer park area; (3) a complete plan of the park, showing installations as required by these regulations, including plans of all buildings, and water and sewerage facilities located or to be constructed within the park area. No permit shall be issued until construction of all required facilities is completed. A permit shall be issued by the Health Officer, based on examination and certification by the Sanitary Engineering Division of the State Board of Health showing satisfactory compliance with these regulations; PROVIDED, that such permit may be suspended temporarily by the Health Officer for failure to maintain compliance with these regulations, or may be revoked, after hearing by the State Health Officer, for continued violation of these regulations.

Section 3. Location and layout:

All trailer parks shall be located on well-drained sites, properly graded to insure rapid drainage and freedom from stagnant pools of water. Each trailer coach space shall consist of a minimum of one thousand square feet, and shall be at least twenty-five feet wide, and the corners clearly marked. Trailers shall be so parked on each space that there is at least fifteen feet side clearance between trailers, at least ten feet between trailers and any adjoining property line, at least twenty-five feet between trailers and any public street or highway and at least fifteen feet between trailers and any building or other structures. No greater number of trailers shall be allowed than there are trailer coach spaces available therefor. Trailer coaches may be parked in double rows, but each trailer coach space shall abut on a street or alley-way at least twenty-five feet in width, which shall have access to a public street or highway.

Section 4. Space facilities:

Each trailer coach space shall be provided with a 110-volt electrical outlet for the operation of electrical fixtures within the trailer; a water tap providing an approved potable water supply under pressure, and a four-inch sewer service connection for the reception of liquid wastes from the trailer coach leading to a public sewerage system or to a septic tank disposal system, or to a public or private sewage treatment plant.

Section 5. Service buildings:

Each park, offering accommodations to dependent trailers, shall be provided with adequate flush-type water closets, baths or showers, slop sinks, and other sanitation facilities which shall conform to the following requirements, but with a minimum of one water closet and one shower or bath tub and one lavatory for each sex, and one slop sink.

Toilet facilities for men and women shall be separated, if in the same building, by a sound-resistant wall.

Toilet facilities for women shall consist of not less than one flush-type water closet for every ten dependent trailer coaches and one shower or bath tub for every fifteen dependent trailer coaches. Each water closet, shower or bath tub shall be in a private compartment.

Toilet facilities for men shall consist of not less than one flush-type water closet for every fifteen dependent trailer coaches; one shower or bath tub for every fifteen dependent trailer coaches, and one urinal for every twenty dependent trailer coaches. Each water closet, shower and bath tub shall be in a private compartment.

Laundry facilities shall be provided in the ratio of one double laundry tub for every twenty trailer coach spaces. Drying spaces shall be provided sufficient to accommodate the laundry of the trailer coach occupants.

Service buildings housing the laundry and toilet facilities shall be permanent structures, complying with all applicable ordinances and statutes regulating plumbing and sanitation facilities, and shall be located not closer than fifteen feet nor further than two hundred feet from any dependent trailer coach.

The service buildings shall be provided with adequate light; shall be well ventilated, and shall be constructed of such moisture-resistant material as to permit repeated cleaning and washing. All openings to the outer air in the toilet and slop sink rooms shall be effectively screened or otherwise protected where necessary against entrance of flies or other insects.

All service buildings and the grounds of the park shall be maintained in a clean, slightly condition, and be kept free from any condition which might constitute a nuisance or menace to the health of any occupant or the public. (Amendment filed Secretary State's office June 27, 1952.)

Section 6. Water supply:

Water shall be supplied under pressure through service or stand-by connections, and the source and method of distribution shall be approved by the Health Officer. Hot and cold running water shall be supplied for all lavatories, baths, laundries and slop sinks in service buildings. Park owners, operators and attendants are responsible for keeping individual water taps at each trailer coach space in good repair and in proper operating condition, and for seeing that pools of water from car washing activities or other outside water usages are not allowed to collect and pond.

Section 7. Waste disposal:

No person shall use any toilet, whether chemical or otherwise, installed in any trailer coach, while the coach is parked in any trailer park, unless such toilet is connected to the four-inch sewer connection as herein provided, and such toilet is of a flush-type design. Kitchen wastes and other non-fecal liquid wastes shall be disposed of through the sewer system connection.

All liquid wastes from the park and the trailers located therein shall be discharged through sewer service connections into a public sewerage system in compliance with applicable ordinances, or into the trailer park septic tank disposal system, or as otherwise approved by the Health Officer.

Section 8. Garbage:

An adequate number of tightly covered metal garbage cans of sufficient capacity shall be provided and located not further than two-hundred feet from any occupied trailer coach space. Garbage and rubbish shall be collected and disposed of by the person operating or in responsible charge of the park as frequently as may be necessary to prevent a nuisance or overflow of garbage cans. Garbage, waste and rubbish shall be disposed of in a manner approved by the Health Officer.

Section 9. Insect and rodent control:

Every person owning or operating a trailer park shall maintain effective controls for

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the prevention of breeding and harborage of mosquitoes, flies, or other obnoxious insects, vermin and rodents within the park area.

Section 10. Safety precautions:

No open fires shall be permitted at any place which might endanger life or property. An adequate number of fire extinguishers of a type approved by the National Board of Fire Underwriters, kept in good working order, and in an easily accessible location, shall be provided for each trailer park.

No person in charge of a trailer park shall permit a domesticated or pet animal to commit a nuisance, or to run at large unless it is inoculated against rabies in accordance with the law of this State.

Section 11. Communicable disease:

Every owner, operator, attendant or any other person operating a trailer park in this State shall immediately notify the local health authority of any suspected communicable or contagious disease which has occurred within such park; and in the case of quarantinable disease, diagnosed by a physician, the park attendant shall not permit the departure of the trailer or its occupants, or the removal therefrom of clothing or other articles having been exposed to the infection, without approval of the Health Officer.

Section 12. Other facilities:

Restaurant, filling stations or other facilities operated in conjunction with trailer coach parks shall be maintained and operated in compliance with applicable health laws and regulations governing such establishments.

Section 13. Registration:

Every person owning or operating a trailer park in this State shall keep a register containing a record of all trailer coach owners and occupants within the park. The register shall contain: (1) the names and addresses of all occupants; (2) make, model, year and license numbers of all motor vehicles and trailer coaches; (3) State, territory or country issuing the licenses; (4) dates of arrival and departure of all trailer coaches.

The register shall be kept available at all times for inspection by health officials and other public officers whose duties require knowledge of the information contained in the register. Register records shall not be destroyed for a period of twelve months following the date of registration.

Section 14. Post regulations:

Copies of these regulations, as furnished by the health officer, shall be kept posted at all times in suitable conspicuous places about the park. The permit for the operation of the park must be conspicuously posted and available at all times to the health officer.

Section 15. Penalties:

Violation of these rules and regulations shall be punishable in accordance with Section 32-17, Code of Laws of South Carolina, 1952, by fine not exceeding \$100.00, or imprisonment not exceeding 30 days; and each day of continued violation shall be a separate offense.

Section 16. All Rules and Regulations Governing Trailer Camps, Parks and Lots previously adopted by the State Board of Health are hereby revoked.

Venereal Diseases

(Filed Secretary of State's office February 17, 1944.)

Section 1.

Syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, and chancroid, hereinafter designated venereal diseases are hereby declared to be contagious, infectious, communicable and dangerous to public health.

Section 2.

Any physician or other person who makes a diagnosis in, or treats a case of syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, or chancroid, shall report the same as hereinafter provided, and any superintendent, or manager of a hospital, dispensary, or jail, or charitable or penal institution or other like place of detention, in which there is a case of venereal disease shall immediately segregate the same and shall report such case immediately in writing to the local health officer, stating the name or the case serial number, address, age, sex, color and occupation of the diseased person, the date of

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the onset of the disease, and the probable source of the infection. (In cases of syphilis, also the probable stage of the disease.) Furthermore, such reports shall be made upon forms prescribed and furnished by the State Board of Health, which shall include window envelopes for purposes of secrecy en route, and the local health officer shall, in turn, promptly forward records of such cases to the State Board of Health at such times and upon such forms as shall be designated by the said Board of Health, PROVIDED, HOWEVER, That all cases occurring in counties not having local health officers shall be reported immediately by the attending physician to the State Board of Health direct.

Section 3.

State, county and municipal health officers, in their respective jurisdictions, are hereby directed and empowered when in their judgment it is necessary, to protect the public health, to make examination of persons being or suspected of being infected with venereal diseases, to require persons infected with venereal diseases to report for and submit to adequate courses of treatment until rendered non-infectious, or to submit to such adequate treatment provided at public expense, and to isolate persons infected or reasonably suspected of being infected with venereal disease, and the term "adequate treatment" shall be taken to mean any plan of treatment carried out over a sufficient period of time which in the opinion of the physician, is capable of rendering the patient non-infectious so far as that particular attack of the given disease is concerned.

Section 4.

All persons who shall be confined or imprisoned in any State, county or city prison or other like place of detention of this State shall be examined and treated for venereal disease by the health authorities or their deputies, without pay, or by other physicians who may be employed by the respective county authorities for such duties. The State, county and municipal boards of health shall have authority to take over such portion of any State, county or city prison or other like place of detention, as may be necessary for a board of health hospital, wherein all persons who shall have been confined or imprisoned and who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, shall be isolated and treated at public expense until rendered non-infectious, or in lieu of such isolation such person may, in the discretion of the Board of Health, be required to report for treatment to a licensed physician or medical health officer, or submit to treatment provided at public expense until adjudged by the attending physician as being permanently non-infectious.

Section 5.

It shall be the duty of every physician and of every other person who examines or treats a person having syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, or chancroid, to instruct him in measures for preventing the spread of such disease, and of the necessity for treatment until adjudged by him to be permanently non-infectious, and to hand him a copy of the circular of information obtainable for this purpose from the State Board of Health.

Section 6.

Upon receipt of a report of a case of venereal disease it shall be the duty of the local health officer to institute measures for the protection of other persons from infection by such venereally infected persons.

(a) Local health officers are authorized and directed to quarantine persons who have or are reasonably suspected of having syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, or chancroid, whenever, in the opinion of the said local health officer, or State Board of Health or its secretary, quarantine is necessary for the protection of the public health. In establishing quarantine the health officer shall designate, and define the limits of the area in which the person known to have, or reasonably suspected of having syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, or chancroid, and his immediate attendant, are to be quarantined, and no person, other than the attending physician, shall enter or leave the area of quarantine without the permission of the local health officer.

No one but the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become non-infectious as determined by the local health officer or his authorized deputy through clinical examination and all laboratory tests, or until permission has been given him so to do by the State Board of Health or its Secretary.

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(b) The local health officer shall inform all persons who are about to be released from quarantine for venereal disease, in case they are not rendered non-infectious, what further treatment should be taken to complete their necessary clinical management. Any person not rendered non-infectious before he is released from quarantine shall be required to sign the following statement after the blank spaces have been filled to the satisfaction of the health officer:

I Residing at hereby acknowledge the fact that I am at this time infected with and agree to place myself under the general medical care of (Name of Physician or Clinic) address within hours, and that I will remain under the treatment of said physician or clinic until released by the health officer of or until my case is transferred with the approval of said health officer to another regularly licensed physician or approved clinic.

I hereby agree to report to the health officer within four days after the beginning of treatment as above agreed, and will bring with me a statement from the above physician or clinic of the medical treatment applied in my case, and thereafter will report as often as may be demanded of me by the health officer.

No one but the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become non-infectious as determined by the local health officer or his authorized deputy through clinical examination and all laboratory tests, or until permission has been given him so to do by the State Board of Health or its Secretary.

I agree, further, that I will take all precautions recommended by the health officer to prevent the spread of the above disease or diseases to other persons and that I will not perform any act which would expose other persons to the above disease or diseases.

I agree, until finally released by the health officer, to notify him of any change of address and to obtain his consent before moving my abode outside his jurisdiction.

.....
(Signature)

.....
(Date)

All persons signing the above agreement shall observe its provisions, and any failure to do so shall be a violation of these regulations. All such agreements shall be filed with the health officer and kept inaccessible to the public as provided in Rule 10.

Section 7. Druggists forbidden to prescribe for venereal diseases.

No druggist or other person not a physician licensed under the laws of the State shall prescribe or recommend to any person any drugs, medicines, or other substances to be used for the cure or alleviation of syphilis, gonorrhea, granuloma inguinale, lympho-granuloma venereum, chancroid, or shall compound any drug or medicine for said purpose from any written formula or order not written for the person for whom the drugs or medicines are compounded and not signed by a physician licensed under the laws of the State.

Section 8. Spread of venereal diseases unlawful.

It shall be a violation of these regulations for any infected person knowingly to expose another person to infection with any of the said venereal diseases, or for any person to perform any act which exposes another person to infection with venereal disease.

Section 9. Giving certificates of freedom from venereal diseases prohibited.

Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, provided this rule shall not prevent the issuance of necessary statements of freedom from infectious diseases written in such form, or given under such safeguards, that their use in solicitation for sexual intercourse would be impossible.

Section 10. Records to be secret.

All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by these regulations and by the laws of the State.

Vital Statistics

(Filed Secretary of State's office February 17, 1944 except as otherwise noted.)

Section 1. Arrangement of registration districts.

That for the purpose of these rules and regulations, the State shall be divided into registration districts, as follows: Every city, town and township shall constitute a registration district; *provided*, that the state registrar may combine two or more registration districts into one registration district.

Section 2. Appointment of registrars.

The state registrar shall appoint local registrars. Any local registrar who fails or neglects to discharge efficiently the duties of his office as laid down in these rules and regulations, or who fails to make prompt and complete returns of births and deaths, as required thereby, shall be forthwith removed from his office of registrar by the state board of health, and his successor appointed, in addition to any other penalties that may be imposed under other sections hereof for failure or neglect to perform his duty.

Section 3. Deputy and sub-registrars.

Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness or disability, who shall, in writing, accept such appointment, and who shall be subject to all rules and regulations governing local registrars. And when it may appear necessary for the convenience of the people in any township, the local registrar shall, upon the request of the state registrar, appoint one or more suitable persons to act as sub-registrar, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note, over his signature, the date on which each certificate was filed, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month. *Provided*, that all sub-registrars shall be subject to the supervision and control of the state registrar and may be by him removed for neglect or failure to perform their usual duties in accordance with the provisions of the rules and regulations of the state registrar, and they shall be liable to the same penalties for neglect of duties as the local registrar.

DEATH CERTIFICATES

Section 4. No body to be buried or removed without permit.

The body of any person whose death occurs in the State, shall not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of, or removed from or into any registration district or be held pending further disposition more than seventy-two hours after death, until a permit for burial, removal or other disposition thereof shall have been properly issued by the local registrar, sub-registrar (or his deputy) of the registration district in which the death occurred.

Section 5. Certificates in "sparsely settled" districts.

In sparsely settled districts, or when it is impracticable to file a death certificate and obtain a burial or removal permit, a body may be buried or removed from such district without a permit, but a certificate of death shall be filed with the registrar within ten days.

Section 6. Bodies brought into the State.

No such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided, except as above set forth. When a dead body is brought into the State for burial, the transit permit which accompanies such body shall be filed with the local registrar of the district where burial or other disposition of which takes place; and the registrar shall note date and place of burial of such permit; and forward same to the state registrar. No fee shall be required for the issue of burial or removal permits in this State.

Section 7. Contents of stillbirth certificates (Form VS-4).

The Certificate of Stillbirth shall contain the following items:

1. Place of Stillbirth, a. County, b. City or town (If outside corporate limits, write RURAL and give township), c. Full name of hospital or institution (If not in hospital or institution, give street address or location).

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2. Usual residence of Mother (Where does mother live?) a. State, b. County, c. City or town (If outside corporate limits, write RURAL and give township), d. Street address (If rural, give location).

3. Child's name (Type or Print).

4. Sex.

5a. This birth Single, Twin, Triplet, 5b. If twin or triplet (This child born 1st, 2nd, 3rd).

6. Date of Stillbirth (Month), (Day), (Year).

7. Father's name, a. (First), b. (Middle), c. (Last).

8. Color or race.

9. Age: (At time of this birth), Years.

10. Birthplace: (State or foreign country).

11a. Usual occupation, 11b. Kind of business or industry.

12. Mother's maiden name, a. (First), b. (Middle), c. (Last).

13. Color or race.

14. Age: (At time of this birth), Years.

15. Birthplace: (State or foreign country).

16. Children previously born to this mother (Do Not include this child) (a) How many children are now living? (b) How many children were born alive but are now dead? (c) How many OTHER children were stillborn (born dead after 20 weeks pregnancy?)

17. Informant.

18a. Length of pregnancy, Weeks, 18b. Weight at birth: lbs., ozs.

19. Is mother married to father of child? Yes or No.

CAUSE OF STILLBIRTH—State only morbid conditions causing fetal death (do NOT use such terms as Stillbirth, Prematurity, Asphyxia, etc.)

20a. Fetal causes, 20b. Maternal causes.

21. State any complications of pregnancy and labor.

22. State all operations for delivery.

23a. Was prenatal blood test for syphilis made? (Yes or No), 23b. Date of test (Name of Laboratory).

I hereby certify that I attended the birth of this child who was born dead on the date stated above at (Time).

24a. Attendant's signature (Specify if M. D., Midwife, or other), 24b. Date signed, 24c. Attendant's Address.

25. If not attended by physician, signature of authorized official, Title.

26a. Burial, Cremation, Removal (Specify), 26b. Date, 26c. Name of Cemetery or Crematory, 26d. Location (City, town, or county) (State), Date rec'd by Local Registrar, Registrar's signature.

27. Funeral Director, Address.

(Filed Secretary State's office November 9, 1949.)

Section 8. Contents of death certificates (Form VS-5).

The certificate of death shall contain the following items:

1. Place of Death (a) County, (b) City or town (If outside corporate limits, write RURAL and give township), (c) Length of Stay (In this place), (d) Full name of hospital or institution (If not in hospital or institution, give street address or location).

2. Usual Residence: (Where deceased lived. If institution, residence before admission), (a) State, (b) County, (c) City or town (If outside corporate limits, write RURAL and give township), (d) Street address (If rural, give location).

3. Name of Deceased (Type or print) (a) First, (b) Middle, (c) Last.

4. Date of Death: (Month), (Day), (Year).

5. Sex.

6. Color or race.

7. Married, never married, widowed, divorced: (Specify).

8. Date of birth.

9. Age: (In years last birthday): If under 1 year, months, days; If under 24 hours, hours and minutes.

10a. Usual occupation: (Give kind of work done during most of working life, even if retired), 10b. Kind of business or industry.

11. Birthplace (State or foreign country).

12. Citizen of what country?

13a. Father's name, 13b. Mother's maiden name.

14. Husband or wife's name.

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15. Was deceased ever in U. S. armed forces? (Yes, no, or unknown) (If yes, give war or dates of service).

16. Social Security Number.

17. Informant.

18. Cause of death: enter only one cause per line for (a), (b) and (c). This does not mean the mode of dying, such as heart failure, asthenia, etc. It means the disease, injury, or complication which caused death. (I) Disease or condition directly leading to death. (Interval between onset and death). (a) Antecedent causes; Morbid conditions, if any, giving rise to the above cause (a) stating the underlying cause last; Due to (b); Due to (c); (II) Other significant conditions; Conditions contributing to the death but not related to the disease or condition causing death.

19a. Date of operation; 19b. Major findings of operation.

20. Autopsy, Yes or No.

21a. Accident, Suicide, Homicide (Specify), 21b. Place of injury: (e.g. in or about home, farm, street, office bldg., etc.) 21c. (City, Town or Township), (County), (State), 21d. Time of Injury, (Month), (Day). (Year), (Hour), 21e. Injury occurred: While at work, Not while at work, 21f. How did injury occur?

22. I hereby certify that I attended the deceased from (date) to (date), that I last saw the deceased alive on (date), and that death occurred at (hour), from the causes and on the date stated above.

23a. Signature (Degree or title), 23b. Address, 23c. (Date signed).

24a. Burial, cremation, removal (Specify), 24b. Date, 24c. Name of cemetery or crematory, 24d. Location: (City, town or county), (State), Date rec'd by Local Registrar, Registrar's signature.

24. Funeral director, address.

(Filed Secretary of State's office November 9, 1949.)

Section 9. Certificates for deaths without physician's attendance.

In case of death occurring without medical attendance, it shall be the duty of the undertaker or other person acting as such, to notify the local registrar of such death, and when so notified the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts. If the death is caused by unlawful or suspicious means, the registrar shall then refer the case to the coroner for his investigation and certification. Any coroner whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for burial permits, shall state in his certificate the name of the disease causing death, or if from external causes (1) the means of death; (2) whether (probably) accidental, suicidal or homicidal; and shall in either case furnish such information as may be required by the state registrar in order properly to classify the death.

Section 10. Duties of undertaker.

The undertaker, or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the local registrar of the district in which the death occurs, and for securing a burial or removal permit, prior to any disposition of the body, except as otherwise provided herein. He shall obtain the personal and statistical particulars required from the person best qualified to supply them, giving the name and addresses of his informant. He shall then present the certificate to the attendant physician, if any, or to the health officer, or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in sections 7 and 8. And he shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal or other disposition of the body.

Section 11. Disposition of burial permit.

The undertaker shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring or otherwise disposing of the body; or he shall dispose of the transit permit as provided by law for the transportation of corpses in this State when shipped by a transportation company; said permit to accompany the corpse to its desired destination, and if the burial shall take place within the State of South Carolina, the permit shall be delivered to the sexton or other person in charge of the place of burial.

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Section 12. Regulations governing transportation of dead in South Carolina.

The use of the separate transmit permit discontinued herewith and the combination burial-removal-transit permit is to be used therefor. Such burial-removal-transit permit shall be given interstate recognition. Permit to be attached to case; A burial transit permit shall be attached in a strong envelope to the shipping case when a body is to be transported by common carrier. Any body to be shipped by common carrier shall be embalmed if its condition permits. If embalming is not possible, or if the body is in a state of decomposition, it shall be shipped only after enclosure in a strong tightly sealed outer case.

Section 13. Permit for burial within the State.

If the interment or other disposition of the body is to be made within the State, the wording of the burial permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the deceased, stating the name, age, sex, cause of death and other necessary details, upon the form prescribed by the state registrar.

Section 14. Duties of sextons.

Each sexton or person in charge of any burial ground shall endorse upon the permit the date of interment over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from date of interment, or within the time fixed by the state board of health. Every sexton of a public cemetery shall keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial and name and address of the undertaker or person acting as such. Where there is no sexton or person in charge of cemetery or burial ground, the undertaker, or person in charge of burial ground, shall write across face of permit, "no person in charge."

BIRTH CERTIFICATES

Section 15. Duties of physicians and midwives.

It shall be the duty of the attending physician or midwife to file a certificate of birth, properly and completely filled out, giving all the particulars required hereby, with the local registrar of the district in which the birth occurs, within ten days after date of birth.

Section 16. Report where there is no physician or midwife.

If there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institution in which the birth occurred, to notify the local registrar, within ten days after birth, of the fact that the birth had occurred. It shall then be the duty of the local registrar to secure the necessary information and signature to make a proper certificate of birth.

Section 17. Filing of birth certificates subsequent to the death of the attending physician or midwife.

The state registrar is hereby empowered to accept birth certificates that are not filed within the prescribed ten days as previously provided for, and when the physicians or midwives who attended the birth die prior to filing such certificates, provided the following requirements are met:

Certificates are to be made out in the prescribed manner and signed by one of the parents on the line ordinarily used by the physician. After the signature the word father or mother, as the case may be, is written. Two affidavits are to be filled out and signed by as many people, other than the parents. The affidavits will set forth the facts that the affiant is at least 12 years older than the child in question, and has known the mother of the child for at least five years prior to the occurrence of the birth, and that he (or she) knows the child in question to have been born to the said mother at the place indicated and on or about the date indicated.

Such affidavits must be signed before a notary public or other officer qualified to administer oaths, and will bear his (or her) seal. The certificate with the two affidavits will then be filed with the state registrar as the original record of birth.

Section 18. Contents of birth certificates (Form VS-2).

The certificate of birth shall contain the following items:

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1. Place of birth, including a. County, b. City or town (If outside corporate limits, write RURAL), c. Full name of hospital or institution (If not in hospital or institution, give street address or location).

2. Usual residence of mother (Where does mother live?), a. State, b. County, c. City or town (If outside corporate limits, write RURAL), d. Street address (If rural, give location).

3. Child's name (Type or print), a. (First), b. (Middle), c. (Last).

4. Sex.

5a. This birth, Single, Twin or Triplet, 5b. If twin or triplet (This child born) 1st, 2nd, 3rd.

6. Date of birth (Month), (Day), (Year).

FATHER OF CHILD

7. Full name, a. (First), b. (Middle), c. (Last).

8. Color or race.

9. Age (At time of this birth) Years.

10. Birthplace (State or foreign country).

11a. Usual occupation, 11b. Kind of business or industry.

MOTHER OF CHILD

12. Full maiden name, a. (First), b. (Middle), c. (Last).

13. Color or race.

14. Age (At time of this birth).

15. Birthplace (State or foreign country).

16. Children previously born to this mother (Do Not include this child) (a) How many OTHER children are now living? b. How many OTHER children were born alive but are now dead? (c) How many children were stillborn (born dead after 20 weeks pregnancy)?

17. I have reviewed the information on this, my child's birth certificate, and find it to be correct. (Signature of Mother).

18. I hereby certify that this child was born alive on the date stated above at (Time), 18a. Signature of attendant, 18b. Attendant at birth, M.D., Midwife, If other specify, 18c. Address, 18d. Date signed.

19. Date rec'd by Local Registrar.

20. Registrar's signature.

21. Date on which given name added, By (Registrar).

FOR MEDICAL AND HEALTH USE ONLY

(This section MUST be filled out)

22a. Length of Pregnancy, Weeks, 22b. Weight at birth, lb., oz.

23. Is mother married to father of child, Yes or No.

24. Mother's blood tested for syphilis? Yes or No, Date, Laboratory.

25a. State any complications of pregnancy and labor, 25b. State any operation for delivery, 25c. Describe any birth injury, 25d. Describe any congenital malformations, 25e. What prophylactic acid used in eyes? 25f. Time used.

Items 22a. through 25f., under the heading of "FOR MEDICAL AND HEALTH USE ONLY", will not be provided in certified copies except under confidential cover for medical and welfare purposes.

(Filed Secretary of State's office November 9, 1949.)

Section 18-A. Standard certificate of live birth (Form VS-3) for providing certified copies:

This form contains the same information as Form No. VS-2 in item 18 except that it will not include the confidential information listed under the heading of "FOR MEDICAL AND HEALTH USE ONLY". This space will be used on Form VS-3 for the purpose of certifying the birth records.

Section 19. How certificates to be written.

All certificates, either of birth or death, shall be written legibly in unfading black ink, and no certificate shall be held to be complete and correct that does not supply all the items of information called for herein, or satisfactorily account for their omission.

RULES AND REGULATIONS

Section 20. Unnamed children—supplemental reports.

When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

Section 21. Reports of persons now in institutions.

All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all of the personal and statistical particulars relative to the inmates in their institutions at the date of the approval hereof, that are required in the forms of the certificate provided for hereby, as directed by the state registrar; and hereafter such records shall be, by them, made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be obtained, they shall be secured in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

Section 22. State registrar to provide forms.

The state registrar shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purpose hereof; and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. And no other blanks shall be used than those supplied by the state registrar.

Section 23. Binding of permanent records, etc.

He shall further arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; the cards to show the name of child or deceased, place and date of birth or death, number of certificate, and the volume in which it is contained. He shall inform all registrars what diseases are to be considered as infectious, contagious, or communicable or dangerous to the public health, in order that when death occurs from such diseases proper precautions may be taken to prevent the spreading of dangerous diseases.

Section 24. Other duties of state registrar.

He shall carefully examine these certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants or undertakers, and all other persons having knowledge of the facts, are hereby required to furnish such information as they may possess regarding any birth or death, upon demand of the state registrar, in person, by mail, or through the local registrar.

Section 25. Duties of local registrars.

It shall be the duty of the local registrar to supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record, to see that it has been made out in accordance with the provisions hereof, and the instructions of the state registrar, and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the returns, and to withhold issuing the burial or removal permit until they are corrected or satisfactorily explained. If the certificate of death is executed as herein provided, he shall then issue a burial or removal permit; *provided*, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar, except under such conditions as may be prescribed by law. If a certificate of birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained.

Section 26. Numbering of certificates.

He shall then number consecutively the certificates of birth and death, in two separate series, beginning with the number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office.

Section 27. To file copy of records with clerk.

He shall also make a complete and accurate copy of each birth and death certificate registered by him in a record book supplied by the state registrar, and the local registrar of every district located in any county shall, within fifteen days after the end of each calendar year, transmit such record book to the county clerk's office of his county and shall take a receipt from the clerk thereof, which receipt shall be transmitted to the state registrar. Said record book shall be preserved by the clerk as a permanent record.

Section 28. When certificate to be filed.

The local registrar shall, on the tenth day of each month, transmit to the state registrar all original certificates, registered by him, during the preceding month. And if no births or deaths occur in any month, he shall, on the tenth day of the following month, report that fact to the state registrar on a card provided for that purpose.

Section 29. Powers of state registrar in case of violations of law.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the State, and with supervisory power over local registrars, to the end that all its requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law personally, or by an accredited representative, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions hereof to the magistrate, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the magistrate shall forthwith initiate and promptly follow up the necessary court proceedings against the persons responsible for the alleged violation of law.

Section 30. Filing a belated or a delayed birth certificate.

Where a birth certificate has not be filed within the prescribed ten days as previously provided, the State Registrar is empowered to accept a belated birth certificate provided the child has not passed its fourth birthday. The belated birth certificate shall be completed on the STANDARD CERTIFICATE OF LIVE BIRTH prescribed by the State Board of Health and shall bear the signatures of the attendant at birth and the mother of the child.

Where a STANDARD CERTIFICATE OF LIVE BIRTH has not been filed by the fourth birthday, as previously provided for in these regulations, the State Registrar is empowered to accept a DELAYED CERTIFICATE OF BIRTH provided the registrant complies fully with the following requirements:

The certificate shall be completed on the DELAYED CERTIFICATE OF BIRTH provided by the State Board of Health. The certificate shall be signed by the registrant if 21 years of age or older. If registrant is a married woman, she must also sign her maiden name. If registrant is under 21 years of age, the certificate shall be signed by either parent or if both parents are deceased, then by registrant's guardian. Where the certificate is signed by a registrant's guardian, this fact shall be inserted below guardian's signature. The certificate must be signed before a notary public or other officer qualified by law to administer oaths and must bear his or her seal of office.

Three items of satisfactory documentary evidence must be submitted with the DELAYED CERTIFICATE OF BIRTH. The documentary evidence must substantiate (1) Date of birth, (2) Place of birth, and (3) Parentage set forth on the DELAYED CERTIFICATE OF BIRTH. The items of documentary evidence shall be returned to registrant or his or her agent after essential information has been abstracted. The State Registrar is empowered to determine what shall constitute satisfactory documentary evidence. (Filed Secretary of State's office April 29, 1952.)

RULES AND REGULATIONS

Water

WATER SUPPLY AND WATER PURIFICATION PLANTS

(Filed Secretary of State's office February 17, 1944.)

Section 1. No water furnished to the public for domestic use shall contain bacteriological, biological, chemical or physical impurities which shall injuriously affect or tend to affect public health. The source, treatment, distribution and quality of the water shall be satisfactory to the State Board of Health according to sanitary surveys and laboratory examinations.

Section 2. No municipality, district, corporation, company, institution, person or persons shall install or enter into contract for installing, or making any additions, changes or alterations in a water supply, water purification plant, until complete plans and specifications fully describing such work have been submitted to and received the written approval of the State Board of Health, and thereafter such plans and specifications must be substantially adhered to unless deviations are submitted to and receive the written approval of the State Board of Health.

Section 3. Upon application, accompanied by an outline of any proposed water supply, water purification plant, or proposed improvements or extensions, the general requirements which will meet the approval, will be outlined. Preliminary or incomplete plans may be submitted for approval and recommendations, if accompanied by a statement outlining omitted portions; detail plans for which shall be submitted for final approval.

Section 4. All plans shall be submitted in duplicate, one copy to be retained on file by the board and one returned to the owner. Plans shall be approved as to structural, mechanical and electrical features by licensed engineers before being submitted for approval by the Board, and shall include:

- (a) General plans.
- (b) Detailed plans.
- (c) Specifications.
- (d) Engineers report.
- (e) All wells, intakes or other sources of supply.
- (f) The purification plant.
- (g) All mains with their sizes.
- (h) All shut-off valves, hydrants.
- (i) Storage or distribution reservoirs.
- (j) Small scale map of water shed.

Section 5. Detailed plans for waterworks shall show:

- (a) Details regarding intake pipe, crib, screens, etc., if water is taken from a stream or lake.
- (b) If ground water supply, details of the well or spring, the manner of protecting the surface from surface wash or other pollution. A sketch showing all possible sources of pollution within 500 feet, and the direction of the ground water flow.
- (c) Complete details of the purification plant, including sedimentation and settling chambers, collecting and piping system, methods of applying various chemicals, filters, including depth, size and uniformity of various strata, washing arrangements, pumps, special devices, etc.
- (d) Details of the pumping station and equipment.
- (e) Any special appurtenances or fixtures in connection with the distribution system.
- (f) Details of elevated tanks, stand pipes or reservoirs used for storage of water.

Section 6. The engineer's report for waterworks shall cover:

- (a) State the present and estimated population twenty-five years hence for municipalities, for institutions, the present and ultimate capacity. Any special conditions that might affect the growth of the municipality or institutions, also any industrial activities that may affect the requirements of the water supply should be discussed. Give estimate of the daily total and per capita consumption, both for the present and future population.
- (b) The source of supply. Results of chemical and bacteriological analyses. If surface supply, the area, population, and a description of the tributary watershed shall be given. All possible sources of pollution, topographical and geographical features of the watershed,

and other conditions that might in any way affect the quality and quantity of the supply shall be discussed in detail.

(c) Purification—State reason for adopting the method of purification outlined, specifying any experimental work done. Describe any special appliances.

(d) Pumping Equipment—The number, type, size and capacity of the various sizes of pipe and describe any special features.

(e) Distribution System—State the class, width and amount of the various sizes of pipe and describe any special features.

(f) Storage—Give amount and location of the storage available, both before and after purification, together with details regarding its effect upon the quality of the water.

(g) Fire Protection—Discuss adequacy of fire protection with regard to pressure and capacity.

Section 7. In general, in the design and construction of waterworks, approved modern practice shall be followed and a licensed engineer shall supervise all construction.

Section 8. For waterworks systems there shall be provided a suitable intake properly screened for surface supplies. Wells and springs shall be adequately protected from all surface wash. Ground water sources shall be so located that there will be no danger of pollution from unsanitary surroundings, such as cesspools, privies, sewers, etc.

Section 9. The pumping equipment shall be divided into two or more units, except where ample storage is available to permit the necessary repairs without interrupting service.

Section 10. Some modern method of purification, applicable to the needs of the municipality or institution, and adaptable to the water to be treated, shall be provided in connection with all surface supplies. Purification plants shall be divided into a sufficient number of units to allow for necessary repairs and alterations without interrupting the services or impairing the quality of the water delivered.

Section 11. Ground supplies.

Some method shall be provided for the treatment of all ground waters found to be corrosive or contain chemical or minerals which will make this water objectionable for general use.

Section 12. Sterilization.

Before being placed into service, all new water distribution systems, or extensions to existing systems, or any valved section of such extension or any replacement in the existing water distribution system shall be sterilized. The following procedure or its alternatives shall be followed:

Par. 1. Preliminary flushing: (Not applicable to procedure of Par. 16, 17, 18 and 19.) Prior to sterilization, all dirt remaining in pipe after its completion shall be removed by a thorough flushing through the hydrants. This may be done either before or after the trench shall have been back-filled and after the pressure test. Each valved section of newly laid pipe shall be flushed independently.

Par. 2. Liquid chlorine: A chlorine gas-water mixture shall be applied by means of a solution feed chlorinating device, or the gas may be fed directly from a chlorine cylinder equipped with proper devices for regulating the rate of flow and the effective diffusion of gas within the pipe. (Chlorination with the gas-water mixture is preferred to direct feed.)

Par. 3. Point of application: The preferable point of application of the sterilization agent shall be at the beginning of the pipe line extension, or any valved section of it, and through a corporation cock inserted in the horizontal axis of the newly laid pipe. The water injector for delivering the gas-water mixture into the pipe shall be supplied from a tap on the pressure side of the gate valve controlling the flow into the pipe line extension.

Par. 4. Rate of application: Water from the existing distribution system or any completed extension of it, entering the newly laid pipe line shall be controlled to flow slowly during the application of chlorine. The rate of chlorine gas-water mixture flow shall be in such proportion to the rate of water flowing through the pipe that the treated water entering the newly laid pipe shall have a concentration of residual chlorine of from 40 to 50 parts per million.

Par. 5. Back pressure in the pipe being treated shall be prevented.

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Par. 6. Retention period: Treated water shall be retained in the pipe long enough to destroy all non-sporeforming bacteria. This period shall be at least three hours and preferably longer as may be directed. After the chlorine treated water has been retained for the required time, the chlorine residual at representative points shall be at least 5 parts per million.

Par. 7. In the process of sterilization newly laid water pipe involving more than one valved section, all valves or other appurtenances shall be operated while the pipe line is filled with the sterilization agent.

Par. 8. Final flushing and test: Following sterilization, all treated water shall be thoroughly flushed from the newly laid pipe line at its extremities until the water through its length shall, upon test, both chemically and bacteriologically be proven equal to the water quality served the public from the existing water supply system.

Par. 9. Should the initial treatment prove ineffective, the sterilization procedure shall be repeated until confirmed tests show that water sampled from newly laid pipe line conforms to the requirements of Par. 8.

Par. 10. Calcium hypochlorite or chlorinated lime in water: A mixture of either calcium hypochlorite or chlorinated lime and water may be substituted as an alternative for liquid chlorine.

Par. 11. Calcium hypochlorite shall contain not less than 70 per cent available chlorine, comparable to commercial products known as "HTH", "Perchloron", and "Maxochlor".

Par. 12. Chlorinated lime, frequently called chloride of lime and known to industry as bleaching powder, shall contain not less than 24 per cent available chlorine.

Par. 13. Proportions of calcium hypochlorite or chlorinated lime and water mixture: A 5 per cent solution shall be prepared, consisting of 5 per cent of either powder to 95 per cent of water by weight.

Par. 14. Application: This calcium hypochlorite or chlorinated lime and water mixture, first made into a paste and then thinned to a slurry, shall be injected or pumped into the newly laid pipe under conditions heretofore specified for liquid chlorine application, (Par. 2 and 7) after preliminary flushing. (Par. 1).

Par. 15. Provisions for final flushing, testing and approval under this alternative shall be similar to those described in Pars. 8 and 9.

Par. 16. Dry calcium hypochlorite or chlorinated lime: Dry calcium hypochlorite or chlorinated lime of the same chlorine content as that specified in Pars. 11 and 12 may be employed as an alternative procedure wherever facilities are not available for sterilization in the manner heretofore specified.

Par. 17. The dosage of calcium hypochlorite powder containing 70 per cent available chlorine shall be one pound for each 1,500 gallons of water pipe capacity treated; chlorine yielding compounds other than calcium hypochlorite powder may be used in amounts proportional to their available chlorine content. This dosage is equivalent to a treatment of 50 parts per million available chlorine; in like manner, one pound of calcium hypochlorite powder will treat 1,800 gallons of water to 40 parts per million available chlorine.

Par. 18. Points of application: A predetermined dose shall be shaken into the pipe, or deposited in a soluble container secured at the first joint attached to the existing water pipe, and the dosage shall be repeated at intervals not greater than 100 feet, and preferably at lesser intervals, as the pipe laying progresses, as may be directed by the engineer.

Par. 19. When treated with dry calcium hypochlorite, or with dry chlorinated lime, the new pipe shall be filled very slowly to avoid washing the powder to the extremity of the pipe line.

Par. 20. The period of retention, valve manipulation and final flushing and testing shall be according to the requirements of Pars. 6, 7, 8, and 9 respectively.

Par. 21. In the event that the test proves unsatisfactory, sterilization shall be repeated by employing acceptable alternative procedures until a satisfactory condition of the water within the pipe is established.

Par. 22. Cuts made in existing pipe lines for the insertion of valves, fittings, repairs, or for any purpose shall be sterilized by shaking a quantity of the powder, pre-determined by the engineer, into the pipe on each side of the out-in. After slowly filling the section and reversing the flow the chlorinated water shall be retained for several hours, then flushed until no odor of chlorine can be detected in the waste water, or preferably until a check shall have been made for residual chlorine as provided in Par. 6.

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Par. 23. After satisfactory sterilization by any of these alternative procedures the consumers may be served from the newly laid pipe line, or the service may be resumed on existing pipe lines.

Section 13. Auxiliary intakes, by-passes or cross-connections whereby polluted water may be pumped or allowed to flow into the distribution system is prohibited.

(a) An existing cross-connection may be continued on condition that monthly inspections are made and the results reported to the board. The board, however, reserves the right to require the elimination of any cross-connection if inspections are not made or if the connection is found faulty. These inspections shall be made by the city water department or the water company, who has charge of the water supply for furnishing water to the city or town.

(b) New cross-connections are prohibited.

Section 14. On the completion of any new water purification plant, or water supply distribution system the state board of health shall be notified when the final inspection is to be made.

WELLS AND SPRINGS

(Filed Secretary of State's office February 17, 1944.)

Section 1. No water furnished to the public for domestic use from wells and/or springs shall contain bacteriological, biological, chemical, or physical impurities which may injuriously affect or tend to affect public health.

Section 2. Wells:

(a) All wells used as a public source of supply for domestic purposes whether dug, driven point, or drilled and cased shall be so located, constructed, and topped and the pump so attached as to prevent pollution of the well water.

(b) Newly constructed and/or reconstructed wells, pumps, water pressure systems, and new piping shall be adequately sterilized. The water shall subsequently be tested for bacteriological cleanliness by either the state board of health or a laboratory approved by the state board of health before such water is used.

(c) Open wells and pitcher pumps are not approved.

Section 3. Springs:

All springs used as a public source of supply for domestic purposes shall be amply protected against pollution. The water shall be tested by the state board of health or by a laboratory approved by the state board of health before being used.

WATER SUPPLIES AND SEWAGE DISPOSAL IN EMERGENCY AREAS OF THE SAVANNAH RIVER PROJECT

(Filed Secretary of State's office June 2, 1952.)

The Counties of Aiken, Allendale and Barnwell, having been declared an emergency public health area surrounding the Savannah River Project by this Committee on April 23, 1952, and thereby being subject to special regulations for the protection of the health of the populace, both permanent and transitory residing therein, the following regulations are hereby promulgated for the control of sanitation with respect to newly constructed or remodeled residences, also trailers on wheels or without wheels, tents, and all other readily moveable places of abode.

Section 1. Within this emergency area no person shall maintain or occupy a newly constructed or remodeled residence, also trailer on wheels or without wheels, tent or other readily moveable place of abode for living quarters which is not provided with a water supply approved by an official agent of the South Carolina State Board of Health.

Section 2. Within this emergency area no person shall maintain or occupy a newly constructed or remodeled residence, also trailer on wheels or without wheels, tent or other readily moveable place of abode for living quarters which is not provided with a connection to a community sewer system or with a connection to a septic tank disposal system approved by an official agent of the South Carolina State Board of Health.

Section 3. Provided further that nothing in the above regulations shall be inconsistent with § 32-1223, S. C. Code 1952.

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Section 4. Enforcement interpretation:

These regulations are issued under the authority of the Code of Laws of 1942 and subsequent legislation. They shall be enforced by the Health Officer in accordance with interpretations and reasons which shall be provided by the South Carolina State Board of Health.

Section 5. Penalties:

The penalties for violation of these rules and regulations are contained in § 32-17, S. C. Code 1952.

CLASSES AND STANDARDS FOR TIDAL SALT WATERS

(Filed Secretary State's office March 31, 1952.)

Class SA

Best Usage of Waters: Shellfishing for market purposes and any other usages.

Quality Standards for Class SA Waters

<i>Items</i>	<i>Specifications</i>
1. Floating solids; settleable solids; oil; sludge deposits.	None attributable to sewage or industrial wastes.
2. Garbage, cinders, ashes, oils, sludge or other refuse.	None
3. Sewage or waste effluents.	None which are not effectively disinfected.
4. Dissolved oxygen.	Not less than 5.0 parts per million.
5. Toxic wastes, deleterious substances, colored or other wastes or heated liquids.	None alone or in combination with other substances or wastes in sufficient amounts or at such temperatures as to be injurious to edible fish or shellfish or the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof or impair the waters for any other best usage as determined for the specific waters which are assigned to this class.
6. Organisms of Coliform group.	The median MPN value in any series of samples representative of waters in the shellfish growing area shall not be in excess of 70 per 100 milliliters.

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Class SB

Best Usage of Waters: Bathing and any other usages
except shellfishing for market purposes.

Quality Standards for Class SB Waters

<i>Items</i>	<i>Specifications</i>
1. Floating solids; settleable solids; oil; sludge deposits.	None attributable to sewage or industrial wastes.
2. Garbage, cinders, ashes, oils, sludge or other refuse.	None
3. Sewage or waste effluents.	None which are not effectively disinfected.
4. Dissolved oxygen.	Not less than 5.0 parts per million.
5. Toxic wastes, deleterious substances, colored or other wastes or heated liquids.	None alone or in combination with other substances or wastes in sufficient amounts or at such temperatures as to be injurious to edible fish or the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters which are assigned to this class.
6. Organisms of Coliform group.	None in excess of the requirements of the South Carolina State Board of Health for bathing water.

Class SC

Best Usage of Waters: Crabbing, non-commercial fishing and any other usages
except bathing or other shellfishing for market purposes.

Quality Standards for Class SC Waters

<i>Items</i>	<i>Specifications</i>
1. Floating solids; settleable solids; oil; sludge deposits.	None which are readily visible and attributable to sewage or industrial wastes or which deleteriously increase the amounts of these constituents in receiving waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto.
2. Garbage, cinders, ashes, oils, sludge or other refuse.	None
3. Dissolved oxygen	Not less than 4.0 parts per million.
4. Toxic wastes, oil, deleterious substances, colored or other wastes or heated liquids.	None alone or in combination with other substances or wastes in sufficient amounts or at such temperatures as to be injurious to edible fish or the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition of fish or impair the waters for any other best usage as determined for the specific waters which are assigned to this class.

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Class SD

Best Usage of Waters: Any usages except fishing, bathing, or shellfishing for market purposes.

Quality Standards for Class SD Waters

Items

1. Floating solids; settleable solids; oil; sludge deposits.
2. Garbage, cinders, ashes, oils, sludge or other refuse.
3. Dissolved oxygen
4. Toxic wastes, oil, deleterious substances, colored or other wastes.

Specifications

None which are readily visible and attributable to sewage or industrial wastes or which deleteriously increase the amounts of these constituents in receiving waters after opportunity for reasonable dilution and mixture with the wastes discharges thereto.

None

Not less than 3.0 parts per million.

None alone or in combination with other substances or wastes in sufficient amounts to prevent survival of fish life or impair the waters for any other best usage as determined for the specific waters which are assigned to this class.

Highway, State Commission.

ADOPTED BY THE SOUTH CAROLINA STATE HIGHWAY COMMISSION.

Pursuant to § 46-187, S. C. Code of 1952

Advertising Contracts and Purchases.

Motor Vehicle Driver's License.

Motor Vehicle License Plates for Members of Congress of the United States.

Prequalification of Bidders on Highway Work.

ADVERTISING CONTRACTS AND PURCHASES

Pursuant to § 33-222, S. C. Code 1952

(Filed Secretary of State's office January 17, 1952.)

Section 1. Construction Contracts—Awards of construction contracts shall be made only after the work to be awarded has been advertised for at least two weeks. Advertisements shall consist in publishing in one or more leading publications of the State a description of the work under appropriate heading, and such publication shall preferably appear in two successive Sunday issues of the leading newspapers selected. When in the judgment of the Highway Department the importance of any particular project warrants, advertisements may also be inserted in not more than two widely circulated publications published outside the State. In addition to the public advertisements, descriptive notices shall be distributed by mail among the qualified contractors of record and other parties known to be interested. Awards of construction contracts shall be approved in advance by the State Highway Commission before such contracts are formally awarded by the Department. Awards, if made, shall be made in each case to the lowest qualified bidders whose bids shall have been formally submitted as required by the Department. The foregoing shall be subject to the following provisions:

(a) Construction contracts involving the expenditures by the Department of more than \$1,000.00 but less than \$10,000.00 may be awarded after advertising for not less than one week, including at least one insertion in one daily newspaper of the State and the mailing of descriptive notices to qualified contractors of record.

(b) In cases of emergencies, and subject to confirmation by the State Highway Commission, the State Highway Department may employ contractors to perform construction or repair work without formalities. All cases of this kind shall be reported in detail and made public at the next succeeding meeting of the Commission.

(c) Unless approved in advance by the State Highway Commission, no construction contract shall be extended to include work not contemplated in the original award, except

within the limitations imposed by said contract. Where, however, in the judgment of the Chief Highway Commissioner and the State Highway Engineer it is in the public's interest, and prices advantageous to the Department are obtained, the Department may extend contracts to include additional work in advance of the approval of the Commission if, on the other hand, to delay such an extension until the next Commission meeting, an advantage to the Highway Department would be lost; but in every such case, every such contract extension shall be subject to approval by the Commission at the next succeeding meeting. Advertisement in the case of extensions of contracts under this paragraph shall consist of detail reports of the transactions made public at opening meetings of the Commission.

(d) The foregoing rules shall not serve to prevent the acceptance of cooperation by persons, firms and corporations that may be jointly interested with the Department in any particular item of work. For example, the Department may share with Railroad Companies the cost of grade separation structures built by such companies under appropriate and lawful agreements.

Section 2. Purchases and Purchase Contracts—A. The State Highway Department shall, wherever practicable, and as may be authorized by law, fulfill its requirements for materials, supplies and equipment, by purchases under contracts awarded by the State Purchasing Division of the Budget and Control Board or under such other lawful arrangements as the said State Purchasing Division may provide for fulfilling requirements of State agencies and departments.

B. Where materials, supplies or equipment are purchased directly by the State Highway Department, all such purchases, or contracts for such purchases, shall conform to requirements previously fixed by the Department with a view, first, to serving satisfactorily the purpose and contemplation and, second, to securing the widest practicable measure of competition consistent with that purpose. The procedure in making purchases or purchase contracts shall be adapted to the circumstances in each case, but in general one of the following plans shall govern:

(a) Awards of purchase contracts shall be made after advertising for at least two weeks and receiving bids. This plan shall be followed wherever the materials, supplies or items of equipment proposed to be purchased are of standard quality and can be described so that all bidders will base their proposals on furnishing articles of identical quality. Advertisements shall consist in publishing in one or more leading publications of the State a statement covering the articles to be purchased under appropriate heading and such publication shall preferably appear in Sunday issues of the leading newspapers selected. In addition, descriptive notices shall be distributed by mail among all parties known to be interested. Awards, if made, shall be made in each case to the lowest responsible bidders whose bids shall have been formally made as required by the Department; provided that in case the bids received indicate the existence of a combine, an understanding or agreement among the bidders for the purpose of fixing the price of the commodity proposed to be purchased, then the Department may, after rejecting all bids, proceed to negotiate purchase contracts with individual firms so as to gain any available advantage for the Department either in price or purchase conditions and to that end may consummate purchase contracts with domestic or foreign persons, firms or corporations.

(b) Wherever the materials, supplies or items of equipment proposed to be purchased are not susceptible of standardization, then the Department, with the approval of the State Highway Commission, may establish an eligible list of bidders or articles. Under this plan bidding shall be restricted to the eligible list of bidders or articles. Advertising and awards shall be as required in Paragraph (a) of this Section, provided that differentials established in advance by the Department and approved by the State Highway Commission may be recognized in determining the low bid.

(c) In purchasing materials, supplies or items of equipment that are controlled by virtue of patent rights so that competition is impracticable, or where the articles proposed to be purchased are produced and offered for sale by fewer than three reputable firms eligible to offer their products in direct competition and where it is impracticable to substitute other materials, supplies or items of equipment for those proposed to be purchased, purchase negotiations may be undertaken by the Department informally and purchase awards to be made with the approval of the State Highway Commission as a result of such negotiations, provided that each such award shall be accompanied by a certificate describing in detail the procedure followed, and provided further, that any purchase contract made under this plan shall be awarded only after advertising the intention to award in at least one issue of one daily newspaper published in the State.

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(d) Materials, supplies and items of equipment necessarily purchased in order to replace parts of existing equipment and structures owned by the State Highway Department, which can be supplied only by the manufacturer of the original articles to be repaired, or by his authorized dealer or agent, may be purchased without formality, provided that the Department shall take advantage of every opportunity to economize by securing the best purchase agreements practicable. Advertising in this case shall consist in reporting to the Commission monthly a complete record of all such transactions.

(e) In cases of emergencies, as may be determined by the Chief Highway Commissioner, and subject to confirmation by the State Highway Commission, the Department may make purchases of materials, supplies and equipment without formalities. All cases of purchases of this kind shall be reported in detail and made public at the next succeeding meeting of the Commission.

(f) Notwithstanding any provision in this section to the contrary, the Department shall follow such procedures as may be prescribed by the State Purchasing Division, State Budget and Control Board.

Section 3. Dealings with Other Governmental Agencies—These rules and regulations are not intended to affect the dealings of the State Highway Department with the Federal Government or any subdivision thereof, nor the South Carolina State Government, or any subdivision thereof, nor any County or Municipality in the State.

Motor Vehicle Driver's License.

(Filed Secretary of State's office April 20, 1937. Rule 1 as amended filed February 10, 1938.)

No. 1 (1) Any person who uses a driver's license issued to or in the name of another person violates the provisions of Chapter 2, Title 46, S. C. Code of 1952 and upon conviction is subject to the penalty provided in § 46-186, S. C. Code of 1952.

(2) Any person who lends, gives, sells, transfers or otherwise grants his or her driver's license to another person violates the provisions of chapter hereinabove referred to and upon conviction is subject to the penalty provided in § 46-186, S. C. Code of 1952.

The foregoing rule or regulation is promulgated for the purpose of administering and enforcing chapter herein referred to.

Rule 13 Driver's License.

Paragraph One: The Motor Vehicle Division, through its duly authorized officers and agents, is hereby authorized and directed to suspend the driver's license of any person for a period of six months upon receiving satisfactory evidence or information of the conviction or of the entry of a plea of guilty and sentence thereupon or of the forfeiture of bail of any such person upon one charge of driving or operating a motor vehicle while under the influence of intoxicating liquor, drugs or narcotics.

Paragraph Two: The Motor Vehicle Division, through its duly authorized officers and agents, is hereby authorized and directed to suspend the driver's license of any person for a period of one year upon receiving satisfactory evidence or information of the conviction or of the entry of a plea of guilty and sentence thereupon or of the forfeiture of bail of any such person upon a second charge of driving or operating a motor vehicle under the influence of intoxicating liquor, drugs or narcotics.

Paragraph Three: The term "intoxicating liquor, drugs or narcotics" shall have such meaning ascribed to them, or any of them, as is otherwise defined by the laws of this State and in case the meaning of these terms, or any of them, is not so defined, then and in that event, said terms, or any of them, shall have such meaning as may be defined by the State Highway Department.

Paragraph Four: Any person whose license has been suspended for violation of these rules and regulations shall forthwith surrender his or her driver's license upon demand made by the Motor Vehicle Division or any of its authorized officers and agents and in case such demand is not made in person, then and in that event, such person shall be notified in writing by the said Motor Vehicle Division, which notice shall be sent by registered mail to the last address furnished in writing to the Highway Department by such person and any such person who has been so notified in writing by said Department shall, within five days, return his or her driver's license to said Department. No person whose driver's license is suspended for violation of these rules and regulations shall, during the period of suspension drive or operate a motor vehicle along or on any public highway, road or street in this State.

Paragraph Five: Any person who violates these rules and regulations and who further

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refuses or fails to surrender or return his or her driver's license in accordance with the provisions of these rules and regulations shall be deemed guilty of a misdemeanor, punishable by a fine of not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars or imprisonment for not more than thirty (30) days as specifically provided for in § 46-186.

Motor Vehicle License Plates for Members of the Congress of the United States

Pursuant to § 46-111, S. C. Code of 1952

(Filed Secretary of State's office July 3, 1952.)

Section 1. A special series of private passenger car license plates is hereby designated, as described herein, which may, upon application being made therefor, and the regular fee required by law paid, be issued to United States Representatives and Senators from South Carolina, said plates to bear the words "Member U. S. Congress" or "Member U. S. Senate," as the case may be. The said plates shall be serially numbered 1 through 6 in the case of those designated "Member U. S. Congress," and 1 and 2 in the case of those designated "Member U. S. Senate." The said specially designated license plates shall be reserved by the State Highway Department for issuance in the order of the seniority of the Representatives and Senators; Provided, that by mutual consent between respective Representatives and Senators the order in which serial numbers are issued may be modified.

Section 2. The specially designated license plates issued hereunder shall not be transferable, and in the event an owner transfers or otherwise disposes of a vehicle for which one of the said plates has been issued, he shall return same to the State Highway Department in exchange for a regular license plate which, in turn, may be transferred as provided for by law; or the State Highway Department may authorize a specially designated license plate to be transferred to another vehicle of the same owner upon receipt of application therefor and payment of the regular fee required by law for registration and license of that vehicle.

Section 3. Specially designated license plates issued hereunder shall be surrendered to the State Highway Department upon expiration of the term of office, resignation, or death of the holder, in exchange for a regular license plate not specially designated.

Section 4. All specially designated license plates issued hereunder shall expire on the 31st day of October of each year.

Section 5. Nothing herein shall be construed as affecting the license and registration fees to be paid on the vehicles involved, nor in any way to otherwise relieve the owners from complying with all provisions of the law relating to the licensing and registration of vehicles in South Carolina.

Prequalification of Bidders on Highway Work.

(Filed Secretary of State's office August 27, 1951.)

In compliance with the provisions of Section 77 of Act 329, Acts of 1951, [§ 33-223, S. C. Code of 1952] the Commission unanimously passed a motion adopting the following rules and regulations providing for prequalifications of bidders on highway work:

1. Effective September 1, 1951 persons, firms or corporations eligible to bid on road or bridge construction work of the State Highway Department shall have qualified as herein required. No bids for such work will be considered by the State Highway Department after that date, except from persons, firms or corporations that have so qualified. Each contractor will be given a rating designed to indicate the kind and quantity of work which he is eligible to be awarded. Eligible contractors will be classified as paving contractors—these may be awarded projects that include grading, minor drainage structures and paving; grading contractors—these may be awarded projects that include grading and minor drainage structures; bituminous surfacing contractors—these may be awarded projects that include grading, minor drainage structures and bituminous surfacing; and bridge contractors—these may be awarded projects that consist of bridges and other similar structures. Each contractor who qualifies for any one of the four classifications will be rated according to the quantity of work that his experience, liquid capital, and responsibility record would, in the judgment of the Highway Department, warrant him to undertake.

2. Classifications and ratings will in each case be based on a verified showing of

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experience, liquid assets, responsibility record, and available equipment. A prerequisite to classification and rating will be a sworn statement furnished the Department by the applicant—this statement to be made on a form provided by the Department and to carry all information required by the Department. Contractors making application for qualification for the first time and those desiring to revise their ratings must file their statements with the Department at least seven (7) days prior to the date on which they desire to become qualified for bidding. However, on projects of value less than \$12,500.00 contractors may bid after furnishing the required statements as to experience, capital and record of responsibility, without regard to the time limitation referred to above.

3. The sworn statement called for in Paragraph 2 above shall be made up by filling in the Department's standard questionnaire form and shall show:

(a) The experience of the applicant in handling the character of work for which he desires to become an eligible contractor.

(b) The liquid assets of the applicant available for carrying on construction work.

(c) A description of the equipment owned by the applicant suitable for carrying on such work.

(d) A list of references, giving names of responsible persons having knowledge of the applicant's character, experience and capabilities.

(e) Such other information as may be called for in the Department's form.

4. Qualified contractors will be rated according to the following rules:

(a) Paving contractors, grading contractors, and bituminous surfacing contractors must show liquid assets at least equal to 15% of the capacity or eligibility rating that will be assigned to them; that is to say, no paving, grading, or bituminous surfacing contractors will be eligible to bid on projects of value so great that the contractor's liquid assets will not be at least equal to 15% of the contract amount.

(b) Bridge contractors must show liquid assets at least equal to 25% of the capacity or eligibility rating that will be assigned them.

(c) In addition to the liquid assets necessary to be shown for a given capacity rating, contractors must also show that they possess and have available appropriate and sufficient equipment to perform satisfactorily the kind and quantity of work contemplated by the classification and rating, or in lieu of actual equipment on hand, the showing of liquid assets, together with verified credit, must be sufficient to provide the necessary equipment in addition to meeting the percentage requirements stated above.

(d) The experience showing made by qualified contractors will also affect their capacity ratings. Contractors who have performed work for the South Carolina State Highway Department in a satisfactory manner and who have demonstrated their responsibility to the satisfaction of the Department will be assigned capacity ratings without further limitations than those indicated by Paragraphs a, b and c above—the classification in each case to be determined by the quality of work hitherto performed.

Contractors who have gained their experience and established their responsibility on work for other State Highway Departments will be given capacity ratings commensurate with the magnitude of such work performed by them as verified by official certificates of the other State Highway Departments concerned. The classification in each case will be appropriate to the experience showing.

Contractors who have gained their experience and established their responsibility on work for other agencies than State Highway Departments will be given capacity ratings according to their classifications as follows:

Paving contractors	— Not exceeding \$100,000.00
Grading contractors	— Not exceeding 100,000.00
Bit. Surf. contractors	— Not exceeding 100,000.00
Bridge contractors	— Not exceeding 50,000.00

(e) The capacity ratings referred to herein represent the total amount of work that the contractor may be awarded at any one highway letting.

5. No applicant who has failed to carry out any contract awarded him by the State Highway Department of South Carolina will be qualified as eligible in any classification. This requirement, however, shall not serve to bar persons having so failed from serving as employees of otherwise eligible contractors.

6. Classifications and capacity ratings of qualified contractors will be fixed by the

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Department subject to the foregoing limitations, the rating in each case to be limited by the requirement affording the maximum restriction.

Each contractor qualifying under these rules and regulations will be furnished a Contractor's Certificate showing his classifications and ratings and bids from him will be read and considered only for contracts within the limitations thus fixed. Whenever the Department desires to reopen the question of capacity rating for any particular contractor, additional sworn statements may be called for and the Contractor's rating will be modified to conform with the new showing, provided that should any contractor fail to comply with the Department's request for additional sworn statements within thirty (30) days after they are called for, then the Department may change his capacity rating or declare him ineligible pending receipt of the new statement.

7. Regardless of capacity rating, no contractor whose progress on work under way is not satisfactory to the Department will be awarded additional work. Also, contractors whose conduct of their work shows incompetency or irresponsibility may be disqualified without notice.

8. Certificates of classification heretofore issued by the Department pursuant to section 5881 Codes of Law, 1932, and currently in effect, are hereby validated; and the same are hereby subject to all the provisions of these Rules and Regulations the same as if they had been issued under these Rules and Regulations.

Industrial Commission.

ADOPTED BY THE SOUTH CAROLINA INDUSTRIAL COMMISSION.

Pursuant to § 72-59, S. C. Code of 1952.

(Filed Secretary of State's office April 21, 1937 except as otherwise noted.)

1. The commission has prepared and will furnish copies of all proper forms required by the provisions of the South Carolina Workmen's Compensation Act, and such form must be used in all cases where they are appropriate. For purposes of convenience insurance carriers and self-insurers will be permitted to place their names and business above the other matter prescribed by the commission on such forms as they may prepare for their convenient use, unless otherwise stated.

2. The Office of the Industrial Commission is in the city of Columbia. The office will be open continuously from 9:00 a.m. to 5:00 p.m. daily except Saturday, which will be from 9:00 a.m. to 1:00 p.m., Sundays and legal holidays excepted. The commission shall remain in continuous session, but in addition to such continuous session the commission shall meet as a body at the call of the chairman for the purpose of transacting such business as may come before it.

3. Every employer within the operations of this Act shall file with the Industrial Commission proof of his compliance with the insurance provisions of the Act. "A notice from the insurer, through the national council compensation rating bureau, pending perfection of the South Carolina compensation rating bureau, certifying this fact will be received as acceptable proof."

Cited in *Banks v. Batesburg Hauling Co.*, 202 S. C. 273, 24 S. E. (2d) 496 (1943).

4. Any insurance carrier having issued a policy to an employer and desiring to cancel same shall be required to give ten days' prior notice thereof to the Industrial Commission at its office in the city of Columbia. Cancellation of policies shall give cause and be reported promptly to the commission.

Reasonable and valid rule.—*Banks v. Batesburg Hauling Co.*, 202 S. C. 273, 24 S. E. (2d) 496 (1943).

5. Any employer desiring to carry his own risk under the provisions of Section 67 the act shall make application therefor on the form prescribed by the commission and shall be required to reply as fully as practicable to all inquiries made thereon. This information so conveyed will be treated with strict confidence. In every case where an application is favorably considered, the Industrial Commission will then decide the amount of acceptable securities which will be required or indemnity bond with corporate

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security. If an indemnity bond is decided upon the amount will not be less than \$10,000.00. Each case will be considered upon its merits and with strict regard to the hazards involved. No record of any information concerning the solvency and financial ability of any employer acquired by a commissioner or his agent by virtue of such powers conferred upon the commission under the South Carolina Workmen's Compensation Act shall be subject to inspection, nor shall any information in any way acquired for such purpose by virtue of such powers be divulged by a commissioner or his agent, unless by order of the court. "So long as said employer shall continue solvent and promptly pays any and all compensation legally due from him in accordance with the provisions of the act and agrees that there will be paid to the South Carolina Industrial Commission a premium of $4\frac{1}{2}\%$ —computed upon the same basis as applicable to the $4\frac{1}{2}\%$ tax paid by insurance carriers, and continues to do so, there shall be no effort to collect under the bond." Permission for self-insurance by municipalities and political subdivisions will be granted under application therefor without submission of proof of financial ability and without deposit of bond or other security. Assurance must be given the commission, however, that provisions will be made for the payment of all awards for compensation, medical fees, and burial expenses, as provided by law. (This paragraph filed as amended Secretary of State's office August 30, 1937.)

6. When within a given year an employer not embraced in the Act has, with his employees, elected to come within the provisions of the Act and has filed notice of such agreement, signed by himself and his employees with the South Carolina Industrial Commission, and has otherwise complied with the provisions of the Act, such employer and the employees who have so elected with him, shall, until notice to the contrary is filed with the Industrial Commission, continue under the Act without an additional election.

Nothing contained in the foregoing rule shall be construed as limiting or restricting the right of any employer or an employee to reject the provisions of the act by giving proper notice thereof.

7. All employers operating under the South Carolina Workmen's Compensation Act, whether by operation of law or by election, shall post publicly and keep posted in their place of business, upon substantial cardboard, the fact that the business is operated under the provisions of the South Carolina Workmen's Compensation Act. This notice shall be substantially as follows:

"We are operating under and subject to the Workmen's Compensation Act of South Carolina.

"In case of accidental injury or death to an employee, the injured employee, or someone acting in his behalf, must give immediate notice to the employer, or general authorized agent.

"Failure to give such immediate notice may be the cause of serious delay in the payment of compensation to the injured employee or his dependents, and may result in failure to receive any compensation benefits whatever under the law.

"Claim must be filed with the industrial commission within one year from date of accident.

"Section 24 of Workmen's Compensation Act. Approved July 17, 1935."

Failure of employer to post notice does not excuse employee from filing claim.—The failure of an employer to comply with this rule by not posting notice required does not have the legal effect of excusing em-

ployee from filing claim for compensation within one year after the accident, as required by § 72-303. *Samuel v. Appleton Co.*, 214 S. C. 157, 51 S. E. (2d) 508 (1949).

8. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment and report to the industrial commission within ten days after the occurrence or the knowledge thereof all accidents requiring medical or surgical attention or causing an employee to be absent from his work. This report shall be made in writing on the forms prescribed by the industrial commission for that purpose.

9. Agreements as to compensation between employer and employee are commanded by the act. Such agreement must be fairly made and in accordance with the provisions of the act, and compromises of liability under the act will not be approved. Memorandum of agreements shall be filed promptly with the commission for their approval or rejection. No such agreements shall be approved unless a physician's report has been filed on the case.

10. The day of the injury shall be taken as the first day of incapacity unless injured

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person has received full pay for the day. In that event the first day of incapacity will be the day following receipt of full pay from the employer and the waiting period will begin on the first day, following accidental injury, employee fails to receive full pay from the employer. The day or days lost because of inability to work on account of the injury shall be counted in the waiting period, even though the days may not be consecutive. For fractional parts of weeks the daily wage shall be one-seventh of this weekly wage in all cases. (This paragraph filed, as amended, Secretary of State's office November 1, 1940.)

11. All compensation due an injured employee or compensation awarded on account of death under the South Carolina Workmen's Compensation Act must be paid direct to the employee, dependents, guardian, or personal representative. All drafts for compensation must be made out and mailed or delivered direct to the employee, dependents or guardian. Compensation payments must be made promptly and in strict accordance with the awards issued by the commission. All compensation must be paid weekly unless otherwise ordered by the commission.

The commission has the responsibility of seeing that this rule is enforced and it must be strictly adhered to. Gilliard v. Victor-Monaghan Co., 211 S. C. 68, 44 S. E. (2d) 109 (1947).

12. Compensation cannot be discontinued after an award has been made or an agreement between parties approved until the full award has been paid, except that in case the award is made during disability. Such disability is presumed to last until the employee returns to work, and in the event the insurance carrier or employer desires to stop payment of compensation, the insurance carrier or employer must file a request to discontinue the payments of compensation, setting forth reasons and serving notice upon employee. Upon such requests, supported by proper medical certificate, the commission will issue an order allowing the insurance carrier to stop compensation and will place the case upon the calendar for hearing, if necessary. Every approval of an agreement will be treated as an award.

Stopping payment on temporary award.— This rule and § 72-352 contemplate that if the insurance carrier desires to stop further payments of compensation under a temporary award, application should be made to the commission for permission to do so and

the employee should receive notice of the application. Halks v. Rust Engineering Co., 208 S. C. 39, 36 S. E. (2d) 852 (1946).
Cited in Gold v. Moragne, 202 S. C. 281, 24 S. E. (2d) 491 (1943).

13. The commission may, of its own motion, order a hearing on a case in dispute.

14. After date for hearing has been set and all parties have been notified, the hearing will not be postponed except on strictly legal grounds, or when postponement will not disrupt the schedule previously arranged.

15. The amputation of any portion of the bone of the distal phalange of a finger or toe to a point opposite the base of the nail will be considered as equivalent to the loss of one-fourth (1/4) of such finger or toe. Amputation below the base of the nail of the bone in the distal phalange will be considered as equivalent to loss of one-half (1/2) of such finger or toe.

16. When, in the discretion of the commission, additional evidence is necessary for the completion of the record in a case on review, the full commission will, in its discretion, order the taking of such evidence before one commissioner when either the employer or employee seeks to introduce new evidence at a review, application must be made for the introduction of new evidence; such application must be in writing and filed with the commission and a copy with accompanying affidavits furnished the opposite side, and it must be shown that the new evidence is of such a character as would follow the common law governing the admission of newly discovered evidence in the application for a new trial. The evidence sought to be introduced must not be evidence of a cumulative or impeaching character, but must be of such a character as likely would have produced a different result had the evidence been procurable at the first hearing. It must be shown that the evidence was not known to the party who desires to introduce same at the time of the hearing before the commissioner, and that by reasonable diligence this new evidence could not have been secured, and that the discovery of such new evidence was brought to the attention of the commission immediately after its discovery. In other words, the law of South Carolina as to the nature and character of evidence required for the granting of new trials, will be applied by the South Carolina Industrial Commis-

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sion before new evidence can be introduced in a review by the full commission. No oral arguments will be heard by the commission on such application, and the commission will act upon such application prior to hearing on appeal.

Ruling on petition to present after-discovered evidence.—The commission should act on a petition to present after-discovered evidence and apprise all parties of its ruling prior to hearing appeal. *Strange v. Heath*, 212 S. C. 274, 47 S. E. (2d) 269 (1948).

Applied in *Spearman v. F. S. Royster Guano Co.*, 188 S. C. 393, 199 S. E. 530 (1938). *In re Crawford*, 205 S. C. 72, 30 S. E. (2d) 841 (1944).

17. The commission, for the purpose of arriving at the commuted value of future payments in approving lump sum settlements, will designate the discount table to be used.

18. In all cases where liability for compensation is denied the defendants must set out in letter details of grounds on which liability is denied. In all cases where an appeal is made to the full commission, the grounds for appeal must be set out fully in detail on commission's form No. 30, which is provided for this purpose and can be obtained from the commission. (Filed, as amended, Secretary of State's office August 30, 1937.)

This rule is a valid exercise of statutory power. *Hoke v. Cherokee County*, 216 S. C. 376, 58 S. E. (2d) 330 (1950).

Statement of exception not sufficient to include an objection by reason of the statute of limitation.—In *Jones v. Anderson Cotton Mills*, 205 S. C. 247, 31 S. E. (2d)

447 (1944), the court held that an exception stating, "error on the part of the hearing commissioner in holding and finding that claimant was entitled to an award", was not sufficient to include an objection by reason of the statute of limitations.

19. Employers and carriers desiring to save possible liability for payment of compensation as for temporary total disability in hernia cases where liability is denied and the claimant will be disabled pending a hearing, a truss may be fitted and cost of same charged as medical expense without this being construed as an admission of liability.

20. On appeal cases, to the full commission, only licensed attorneys in South Carolina shall be allowed to practice before the South Carolina Industrial Commission.

21. The rules of the commission are subject to amendment at any time, and the commission will adopt additional rules whenever, in its judgment, the same are advisable.

22. Envelope containing application for review, form No. 30, must bear postmark date of sending postoffice, within fourteen (14) days, from and exclusive of the date official award was received.

B. It is a requisite that form No. 30, application for review, must be used by being properly executed and forwarded to the commission as above instructed, if case is to be reviewed.

23. A standing hearing cost of \$7.50 be charged on all single commissioner hearings; charges for any additional costs such as registered letters, subpoenas, or testimony separately from the \$7.50.

24. The minimum rate for board and lodging shall be \$1.00 per day for board, and \$2.00 per week for lodging, subject to proration.

(Rules 25-27 filed Secretary of State's office October 17, 1950.)

25. On all cases appealed to full commission for review appellant may submit typewritten briefs to the commission 5 days before date of hearing and copy of brief be served respondent.

26. In all cases of disfigurement where the claimant has an attorney and an agreement has been reached, the commissioner will not view the disfigurement; therefore, the agreement will be approved by the claims examiner.

27. "In all contested cases, Form 20, "Statement of Days Worked and Earnings of Employee" and all medical reports incidental to the injury, are to be submitted to this commission so that they can be placed in the file prior to the date of the hearing."

28. A. An employee affected by occupational disease who desires to continue in the same employment or to obtain new employment to which such disease is a hazard, may waive his right to further benefits for any disablement or any disability caused by an aggravation of the occupational disease in the same or new employment, provided written application is made to the Industrial Commission for approval of such waiver on the form required by the Commission. The Industrial Commission will notify the employer, employee, and insurer of its approval or disapproval and its action thereon shall be deemed to date back to the time the waiver is filed with the Commission.

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B. Application for approval of waiver shall be filed with the Commission within 10 days after the date of execution, and shall include the statement of a reputable doctor that he has examined the applicant, the nature, extent and probable duration of such disease, and, if practicable, should include his opinion as to whether or not the employee by continuance in the work runs the risk of becoming partially or totally disabled.

C. The Industrial Commission reserves the right to disapprove any application by, and recommend against the employment of, an employee where it concludes that to permit the employee to work in the employment will expose him to a hazard which may imminently render him disabled from an occupational disease.

(Filed Secretary of State's office December 14, 1949.)

29. In every case involving a claim for death benefits, no settlement or agreement shall be affected until the case has been entered on the Commission's docket and full hearing held before a Commissioner. (Filed in Secretary of State's office April 8, 1952.)

Insurance Commissioner

ADOPTED BY THE SOUTH CAROLINA INSURANCE COMMISSIONER

Pursuant to Act No. 64 of the 1947 Acts and Joint Resolutions which has been repealed, but see § 66-432, S. C. Code 1952.

(Filed Secretary of State's office June 15, 1948 except as otherwise provided.)

Definition: Within the meaning of the rules and regulations promulgated under § 66-432 the word "Dealer" shall include any person, firm, or corporation selling, or causing to be installed or serviced liquified petroleum gas or liquefied petroleum gas appliances and/or equipment, either retail or wholesale.

The National Board of Fire Underwriters Pamphlet No. 58 for the design, installation and construction of containers and pertinent equipment for the storage and handling of Liquefied Petroleum Gases is adopted in its entirety as regulations for the liquefied petroleum gas industry in the State of South Carolina. In addition to Pamphlet No. 58, the following regulations are adopted:

1. Every liquefied petroleum gas dealer must register with the Insurance Department showing the location of all plants and offices, the approximate area to be served and the name, position, qualifications, and experience of each employee making installations or servicing them or handling liquefied petroleum gas. When an employee leaves the service of a dealer for any reason whatever, the dealer must report this fact to the Insurance Commissioner along with the reason for the employee's leaving.

2. Every dealer must maintain on forms to be furnished by the Insurance Commissioner a record showing the exact location of each installation, the type and size of equipment, and the name of the employee or employees making such installation. This record must be kept by months and the record for each month must be complete by the 15th of the month following. These records shall be maintained at the office or branch office in the area in which the installations are made.

3. It shall be unlawful for any bulk gas tank truck operator to leave the immediate vicinity of his truck at any time unless the truck is parked in its usual storage place; provided, that this shall not apply to any truck which has been purged and bears a sign so indicating.

4. It is required that all liquefied petroleum gas accidents of any type be reported to the Insurance Commissioner of the State of South Carolina within seventy-two (72) hours after occurrence. (Filed Secretary of State's office October 8, 1949.)

RULES AND REGULATIONS

NBFU Pamphlet No. 58

STANDARDS

OF THE

National Board of Fire Underwriters

FOR THE

Storage and Handling of

LIQUEFIED PETROLEUM GASES

AS RECOMMENDED BY THE

NATIONAL FIRE PROTECTION ASSOCIATION

(Filed Secretary of State's office February 21, 1952.)

NATIONAL BOARD OF FIRE UNDERWRITERS

85 John Street, New York 38, N. Y.

222 West Adams Street, Chicago 6, Ill.

Merchants Exchange Building, San Francisco 4, Calif.

SEPTEMBER, 1951

NOTE

This pamphlet supersedes the edition of October, 1950. The text was prepared by a Committee of the National Fire Protection Association and is the same as that published in NFPA 58, May, 1951.

DEFINITIONS

The word "approved" as used in these standards means acceptable to the authority having jurisdiction. For insurance purposes the authority referred to is the insurance inspection department or organization having jurisdiction.

The word "shall" indicates provisions which are considered essential for protection of life and property.

The word "should" indicates advisory provisions.

The authority having jurisdiction should be consulted on any questions arising in the application of these standards.

Underwriters' Laboratories, Inc., tests, devices and materials for compliance with the standards of construction and performance established by the Laboratories and with regard to their suitability for installation in accordance with the appropriate standards of the National Board of Fire Underwriters. Such devices and materials are listed in the following Laboratories' publications.

List of Inspected Fire Protection Equipment and Materials,

List of Inspected Gas, Oil and Miscellaneous Appliances,

List of Inspected Electrical Equipment,

List of Inspected Electrical Equipment for Hazardous Locations,

List of Inspected Appliances Relating to Accident Hazard, Automotive Equipment, and Burglary Protection.

Bi-Monthly Supplement to all Lists.

Copies may be obtained from inspection departments or from Underwriters' Laboratories, Inc., Chicago, New York or San Francisco.

Many products may be identified by the Laboratories' label, indicating both listing and factory inspection of current output.

A device or system having materials or forms different from those detailed in these standards may be examined and tested according to the intent of the standards and if found equivalent may be approved.

See inside back cover for items referred to in these standards, which are listed by Underwriters' Laboratories, Inc.

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STANDARDS FOR THE STORAGE AND HANDLING OF LIQUEFIED PETROLEUM GASES.

INTRODUCTION

The term "liquefied petroleum gases" as used in these standards shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of them; propane, propylene, butanes (normal butane or iso-butane), and butylenes.

In the interest of safety it is important that employees understand the properties of these gases, and that they be thoroughly trained in safe practices for handling, distribution and operation.

Under moderate pressure the gases liquefy, but upon relief of the pressure are readily converted into the gaseous phase. Advantage of this characteristic is taken by the industry, and for convenience the gases are shipped and stored under pressure as liquids. When in the gaseous state, these gases present a hazard comparable to any flammable natural or manufactured gas, except that being heavier than air, ventilation requires added attention. The range of combustibility is considerably narrower and lower than that of manufactured gas.

In the case of pure product at atmospheric pressure and below 31° F., normal butane is a liquid. Propane is a liquid at atmospheric pressure at temperatures below minus 44° F. and normally does not present a flammable liquid hazard.

Rapid vaporization takes place at temperatures above the boiling points (normal butane about 31° F.; propane about minus 44° F.). Normal storage of these gases is as a liquid under pressure.

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Application of Rules.

(a) The following standards are intended to apply to the design, construction, location, and operation of liquefied petroleum gas installations. These standards do not apply to marine or pipe line terminals, natural gasoline plants, refineries or tank farms*; nor do they apply to chemical plants where specific approval of construction and installation plans is obtained from the authority having jurisdiction, provided such approval is based on substantially equivalent requirements.

(b) "Basic Rules" apply to all divisions except Division V, and unless noted in "Basic Rules."

(c) Division I—"bottled gas"—applies to installations utilizing containers constructed in accordance with Interstate Commerce Commission specifications.

(d) Division II applies to installations utilizing containers other than those constructed in accordance with Interstate Commerce Commission specifications.

(e) Division III applies to containers and pertinent equipment mounted on trucks, semi-trailers and trailers used for the transportation of liquefied petroleum gases.

(f) Division IV applies to fuel containers for the use of liquefied petroleum gases as motor fuel; or with easily movable, readily portable or self propelled internal combustion engines (*i.e.*, highway vehicles, trucks, buses, tractors, automobiles, etc.; farm machinery, construction and miscellaneous machinery; industrial plant tractors, locomotives, similar mobile or semi-mobile units; etc.).

(g) Division V applies to the storage of containers not installed for use at final utilization point.

(h) Division VI applies to cylinder systems for cooking and heating installations on highway mobile vehicles.

(i) Where liquefied petroleum gas is used with oxygen, the Standards for the Installation and Operation of Gas Systems for Welding and Cutting (No. 51)[†] shall apply.

(j) Where liquefied petroleum gas is used in Utility Gas plants, Standards for the Design, Installation and Construction of Containers and Pertinent Equipment for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants (No. 59)* shall apply.

(k) When reference is made to gas in these standards it shall refer to liquefied petroleum gases in either the liquid or gaseous state.

(l) The term "containers" includes all vessels such as tanks, cylinders or drums used for transportation or storing liquefied petroleum gases.

(m) The term "systems" as used in these standards refers to an assembly of equipment consisting essentially of the container or containers, major devices such as vaporizers, relief valves, excess flow valves, regulators, etc., and piping connecting such parts.

Submittal of Plans.

For industrial installations utilizing storage containers of over 1200 gallons capacity, plans shall be submitted to the enforcing authority having jurisdiction before construction.

BASIC RULES.

B.1. Odorizing Gases.

(a) All liquefied petroleum gases shall be effectively odorized by an approved agent of such character as to indicate positively, by a distinctive odor, the presence of gas down to concentration in air of not over one-fifth the lower limit of combustibility; provided, however, that odorization is not required if harmful in the use or further processing of the liquefied petroleum gas, or if odorization will serve no useful purpose as a warning agent in such use or further processing.

NOTE: The lower limits of combustibility of the more commonly used liquefied petroleum gases are: Propane, 2.15 per cent; Butane, 1.55 per cent. These figures represent volumetric percentages of gas in gas-air mixtures in each case.

B.2. Approval of Equipment and Systems.

(a) Each system utilizing I.C.C. containers shall have their container valves, connectors, manifold valve assemblies, and regulators (bases, hoods or cabinets if desired):

* Tanks farms do not include storage located in industrial installations.

† Published in National Fire Codes, Volume I, 1951, and in separate pamphlet form, available from the NFPA and in Pamphlet No. 51, published by the National Board of Fire Underwriters, 85 John Street, New York 38, N. Y.

* Published in National Fire Codes, Volume I, 1951, available from the NFPA and in Pamphlet No. 59, published by the National Board of Fire Underwriters, 85 John Street, New York 38, N. Y.

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1. Tested and listed by Underwriters' Laboratories, Inc., or,
2. Tested and listed by a nationally recognized testing laboratory, or,
3. Inspected and approved by the authority having jurisdiction.

(b) Each system for domestic and/or commercial use utilizing containers of 1,200 gallons or less water capacity, other than those constructed in accordance with I.C.C. specifications, shall be:

1. Tested and listed by Underwriters' Laboratories, Inc., or,
2. Tested and listed by a nationally recognized testing laboratory, or,
3. Inspected and approved by the authority having jurisdiction.

(c) In systems utilizing containers of over 1,200 gallons water capacity, each regulator, container valve, excess flow valve, gauging device and relief valve installed on or at the container, shall have its correctness as to design, construction and performance determined by being:

1. Tested and listed by Underwriters' Laboratories, Inc., or,
2. Tested and listed by a nationally recognized testing laboratory, or,
3. Inspected and approved by the authority having jurisdiction.

B.3. Requirement for Construction and Original Test of Containers.

(a) Containers used with systems embodied in Divisions II, III, IV, except as provided in 4.2(c), and VI, except as provided in 6.1(a), shall be designed, constructed and tested in accordance with the Unfired Pressure Vessel Code sponsored by either the American Society of Mechanical Engineers (ASME) or the American Petroleum Institute and the American Society of Mechanical Engineers (API-ASME) or in accordance with the rules of the authority under which the containers are installed, provided such rules are in substantial conformity with the rules of the ASME Code or the API-ASME Code.

1. Containers constructed according to the 1949 and earlier editions of the ASME Code do not have to comply with paragraphs U-2 to U-10 inclusive and U-19. Containers constructed according to paragraph U-70 are not authorized.

2. Containers constructed according to API-ASME Code do not have to comply with Section I or with appendix to Section I or with paragraph W-601 to W-606 inclusive in the 1943 and earlier editions.

(b) The provisions of paragraph B.3(a) shall not be construed as prohibiting the continued use or reinstallation of containers constructed and maintained in accordance with the standards for the Storage and Handling of Liquefied Petroleum Gases (No. 58)* in effect at the time of fabrication.

(c) Containers used with systems embodied in Division I, in paragraph 4.2(c) of Division IV, and in Division VI, except as provided in 6.1(b), shall be constructed, tested and stamped in accordance with Interstate Commerce Commission Specifications effective at the date of their manufacture.

B.4. Markings on Containers.

(a) Each container or system covered in Divisions II, III, and IV, except as provided in Par. 4.2(c), shall be marked as specified in the following:

1. With a marking identifying compliance with, and other markings required by the rules of the code under which the container is constructed; or with the stamp and other markings required by the National Board of Boiler & Pressure Vessel Inspectors.

Underground: Container and system nameplate.

Aboveground: Container.

2. With notation as to whether system is designed for underground or aboveground installation.

Underground and aboveground: System nameplate.

3. With the name and address of the supplier of the system, or the trade name of the system.

Underground and aboveground: System nameplate.

4. With the water capacity of the container in pounds or gallons, U. S. Standard.

Underground: Container and system nameplate.

Aboveground: Container.

5. With the working pressure in pounds per sq. in. for which the container is designed.

Underground: Container and system nameplate.

Aboveground: Container.

* As published by the National Fire Protection Association or by the National Board of Fire Underwriters (85 John Street, New York 38, N. Y.)

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6. With the wording "This container shall not contain a product having a vapor pressure in excess of p.s.i. gauge at 100° F." See B.12(e).

Underground and aboveground: System nameplate or tag on filler connection.

7. With the tare weight in pounds or other identified unit of weight for containers with a water capacity of 300 lbs. or less.

Underground: No requirement.

Aboveground: Container.

8. With marking indicating the maximum level to which the container may be filled with liquid at temperatures between 20° F. and 130° F. except on containers provided with fixed maximum level indicators, or which are filled by weighing. Markings shall be in increments of not more than 20° F.

Aboveground and Underground: System nameplate or on liquid level gauging device.

9. With the overall length and outside diameter of the container in inches.

Underground: System nameplate.

Aboveground: No requirement.

(b) Markings specified on "container" shall be on the container itself. Markings specified on "system nameplate" shall be on a metal tag or nameplate attached to the system, located in such a manner as to be readily visible.

B.5. Location of Containers and Regulating Equipment.

(a) Containers and first stage regulating equipment shall be located outside of buildings other than those especially provided for this purpose. Except as herein provided, each individual container shall be located with respect to nearest important building or group of buildings or line of adjoining property which may be built on in accordance with the following table:

Water Capacity Per Container	Minimum Distances		
	Containers		Bet. Above-
	Under-	Above-	ground con-
	ground	ground	tainers
Less than 125 gallons	10 feet	None	None
125 to 500 gallons	10 feet	10 feet	3 ft.
501 to 1,200 gallons	25 feet	25 feet	3 ft.
Over 1,200 gallons	50 feet	50 feet	5 ft.

(b) No containers while installed for use shall be stacked one above the other.

(c) In cases of bulk storage in heavily populated or congested areas, the authority having jurisdiction shall determine restrictions of individual tank capacity, total storage, and distance to line of adjoining property which may be built on and other reasonable protective methods.

(d) In industrial installations involving containers of 150,000 gallons aggregate capacity or more, where serious mutual exposures between the container and adjacent properties prevail, the authority having jurisdiction may require fire walls designed and constructed in accordance with good engineering practice.

(e) In the case of buildings devoted exclusively to gas manufacturing and distributing operations the above distances may be reduced provided that in no case shall containers of capacity exceeding 500 gallons be located closer than 10 ft. to such gas manufacturing and distributing buildings.

(f) Any container used in domestic or commercial service, where transfer of liquid is made from such containers into portable containers such as on tractors, skid tanks, or similar applications shall be located not less than 50 feet from nearest important building. Special attention shall be given to maintaining the above distances on such transferring in trailer camps with respect to any trailer, except as provided in paragraph 6.12.

(g) Readily ignitable material such as weeds and long dry grass shall be removed within ten feet of any container.

B.6. Container Valves and Accessories.

(a) All shut-off valves and accessory equipment (liquid or gas) shall be suitable for liquefied petroleum gas service, and designed for not less than the maximum pressure to which they may be subjected. Valves and accessories which may be subjected to container pressure shall have a rated working pressure of at least 250 pounds per square inch gauge.

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(b) All connections to containers, except safety relief connections, liquid level gauging devices and plugged openings, shall have shut-off valves located as close to the container as practicable [except as provided in B.6(e)].

(c) Excess flow valves where required by these standards shall close automatically at the rated flows of vapor or liquid as specified by the manufacturer. The connections or line including valves, fittings, etc., being protected by an excess flow valve shall have a greater capacity than the rated flow of the excess flow valve.

(d) Liquid level gauging devices which are so constructed that outward flow of container contents shall not exceed that passed by a No. 54 drill size opening, need not be equipped with excess flow valves.

(e) Openings from tank or through fittings attached directly on tank to which pressure gauge connection is made need not be equipped with shut-off or excess flow valves if such openings are restricted to not larger than No. 54 drill size opening.

(f) Excess flow and back pressure check valves where required by these standards shall be located inside of the container or at a point outside where the line enters the container; in the latter case, installation shall be made in such manner that any undue strain beyond the excess flow or back pressure check valve will not cause breakage between the container and such valve except as provided in Par. 6.12. (See Div. III for tank truck requirements.)

(g) Excess flow valves shall be designed with a by-pass, not to exceed a No. 60 drill size opening to allow equalization of pressures.

B.7. Piping, Tubing, and Fittings.

(a) Piping, except as provided in Division IV, par. 4.5(a) and Division VI, par. 6.9(c), shall be wrought iron or steel (black or galvanized), brass or copper pipe; or seamless copper, brass, steel or aluminum tubing. All piping or tubing shall be suitable for a working pressure of not less than 125 pounds per square inch. Copper tubing may be of the standard grade K or L or equivalent having a minimum wall thickness of 0.032 inches. Aluminum tubing shall not be used in exterior locations or where it is in contact with masonry or plaster walls or insulation.

(b) In systems where the gas in liquid form without pressure reduction enters the building [see B.10(c)] only heavy walled seamless brass or copper tubing with an internal diameter not greater than 3/32 inch, and a wall thickness of not less than 3/64 inch shall be used. This requirement shall not apply to commercial gas plants or bulk stations where cylinders, drums or tank trucks are filled, nor to industrial vaporizer buildings.

(c) Pipe joints may be screwed, flanged, welded, soldered or brazed, with a material having a melting point exceeding 1000° F. For operating pressures of 125 p.s.i.g. or less, fittings shall be designed for a pressure of at least 125 pounds per square inch gauge. For operating pressures above this, fittings shall be designed for a minimum of 250 pounds per square inch gauge. Cast iron fittings shall be prohibited. Joints on seamless copper, brass, steel or non-ferrous gas tubing shall be made by means of approved gas tubing fittings, or soldered or brazed with a material having a melting point exceeding 1000° F.

(d) All materials such as valve seats, packing, gaskets, diaphragms, etc., shall be of such quality as to be resistant to the action of liquefied petroleum gas under the service conditions to which they are subjected.

(e) Approved flexible hose may be used on the low pressure side of the system as follows:

1. Only appliances which are necessarily portable or which have to be moved from place to place or which require a vibration joint, may be connected with flexible hose. On such appliances the shut-off shall be in the solid connection or piping only, and not at the appliance end of the hose; industrial equipment is exempt from this provision.

2. Only approved hose of proper design and good quality shall be used, and it shall be securely attached to each end.

3. The key of the shut-off on an independent connection shall not be within 6 inches of the key of any other shut-off. In such an installation the keys shall be in directions perpendicular to each other so that the possibility of the accidental turning on of the gas at the wrong shut-off will be lessened.

4. Where flexible hose is used, a shut-off shall not be placed close to the floor or in any other position where it may be turned on by accident.

5. A wall outlet to which an appliance is to be connected with flexible hose shall be

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so placed as to reduce to a minimum the passing to and fro across the hose. Where flexible hose is used, it shall be of the minimum practicable length. Extending hose from one room to another is prohibited.

6. Where an appliance, such as a gas iron for industrial work, is always used in the same location, but its operation demands a flexible hose, the flexible hose shall be permanently attached at the supply end by a threaded or other secure metal connection, and the appliance end shall be provided with a secure metal joint, which can be conveniently made and separated, in preference to a rubber slip end.

7. Where the hose is likely to be subjected to excessive temperatures, either through accident or because of the special nature of the appliance, only hose properly protected or made up of non-combustible material shall be used.

(f) All piping, tubing, or hose shall be tested after assembly and proved free from leaks at not less than normal operating pressures. After installation, piping and tubing of all domestic and commercial systems shall be tested and proved free of leaks using a manometer or equivalent device that will indicate a drop in pressure. Test shall not be made with a flame.

(g) Provision shall be made for expansion, contraction, jarring and vibration, and for settling. This may be accomplished by flexible connections.

(h) Piping outside buildings may be buried, above ground, or both, but shall be well supported and protected against mechanical injury. Where soil conditions warrant, all piping shall be protected against corrosion. Where condensation may occur, the piping shall be pitched back to the container, or suitable means shall be provided for revaporization of the condensate.

B.8. Hose Specifications.

(a) Hose shall be fabricated of materials that are resistant to the action of liquefied petroleum gases in the liquid phase.

(b) Hose subject to container pressure shall be designed for a bursting pressure of not less than five times the vapor pressure of the product at 100° F. for which the container was designed. Hose connections when made shall be capable of withstanding a test pressure of twice the vapor pressure of the product at 100° F. for which the container is designed.

(c) Hose and hose connections located on the low pressure side of regulators or reducing valves shall be designed for a bursting pressure of not less than 125 lb. but not less than five times the pressure setting of the safety relief devices protecting that portion of the system. All connections shall be so designed that there will be no leakage when connected.

(d) Where hose is to be used for transferring liquid from one container to another, wet hose is recommended. Such hose shall be equipped with suitable shut-off valves at discharge end. Provision shall be made to prevent excessive hydrostatic pressure in the hose.

B.9. Safety Devices.

(a) Every container except those constructed in accordance with I.C.C. specifications and every vaporizer (except motor fuel vaporizers and except vaporizers described in B.10(b) (3) and 2.3(e) (1) whether heated by artificial means or not, shall be provided with one or more safety relief valves of spring-loaded or equivalent type. These valves shall be arranged to afford free vent to the outer air with discharge not less than 5 ft. horizontally away from any opening into the building which is below such discharge. The rate of the discharge shall be in accordance with the provisions of Appendix A, or Appendix B in the case of vaporizers, or Appendix C in the case of motor fuel containers.

(b) Container safety relief valves shall be set to start to discharge as follows, with relation to the design working pressure of the container:

Containers	Minimum	Maximum
ASME-U-68, U-69	110%	125%
ASME-U-200, U-201	90	100
ASME—1950 edition	90	100
API-ASME	90	100
I.C.C. As approved by Bureau of Explosives		

(c) Safety relief devices used with systems employing containers other than those constructed according to I.C.C. specifications shall be so constructed as to discharge at not

less than the rates shown in Appendix A, before the pressure is in excess of 120% of the maximum permitted start to discharge pressure setting of the device. Such valves shall also be rated according to the requirements of the 1950 edition of the ASME Unfired Pressure Vessel Code.

NOTE: On containers with working pressure above the 200 type container as set forth in sections 2.1, 3.1, and 4.2, the Safety Relief Valve minimum flow requirements for 200 type containers may be used.

(d) In certain locations sufficiently sustained high temperatures prevail which will require the use of a lower vapor pressure product to be stored or the use of a higher designed pressure vessel in order to prevent the safety valves opening as the result of these temperatures. As an alternative the tanks may be protected by cooling devices such as by spraying, by shading or other effective means.

(e) Safety relief valves shall be so arranged that the possibility of tampering will be minimized; if pressure setting or adjustment is external, the relief valves shall be provided with approved means for sealing adjustment.

(f) No shut-off valves shall be installed between the safety relief valves and the container except that a shut-off valves may be used where the arrangement of this valve is such as always to afford full required capacity flow through the relief valves.

NOTE: The above exception is made to cover such cases as a three-way valve installed under two safety relief valves, each of which has the required rate of discharge and is so installed as to allow either of the safety relief valves to be closed off but does not allow both safety valves to be closed off at the same time. Another exception to this may be where two separate relief valves are installed with individual shut-off valves. In this case the two shut-off valve stems shall be mechanically interconnected in a manner which will allow full required flow of one relief valve at all times.

(g) Safety relief valves shall have direct communication with the vapor space of the container.

(h) Each container safety relief valve used with systems covered by divisions II, III, IV except as provided in 4.2(c) and VI except as provided in 6.1(a) shall be plainly and permanently marked with the following: "Container Type" of the pressure vessel on which the valve is designed to be installed; the pressure in p.s.i. gauge at which the valve is set to start to discharge; the actual rate of discharge of the valve in cubic feet per minute of LP-Gas at 60° F. and 14.7 pounds per square inch, absolute; and the manufacturer's name and catalogue number, for example: T-200-250-4050—indicating that the valve is suitable for use on a Type 200 container, that it is set to start to discharge at 250 p.s.i. gauge; and that its rate of discharge [see Section B.9(b) and (c)] is 4050 cubic feet per minute of liquefied petroleum gas as determined in Appendix A.

NOTE: Frequent testing of safety relief valves, as would be required where there is a probable increase or decrease of the releasing pressure of the valve due to clogging, sticking, corrosion or exposure to elevated temperatures, is not necessary for such valves on liquefied petroleum gas containers for the following reasons:

The gases are so-called "sweet gases," *i.e.*, they have no corrosive effect on the metal of the container or valve; the valves are constructed of materials not readily subject to corrosion and are installed in pressure vessels so as to be protected against the weather. Further, the temperature variations are not sufficient to bring about any permanent set of the valve springs. Another reason is that the gases are odorized and instant warning is given by any escape of gas. Although general storage of these gases has been on a widespread scale for more than twenty years, industry experience has not shown any cases of these safety valves not functioning properly.

It is recognized, however, that like all mechanical devices, these valves cannot be expected to remain in reliable operative condition forever, hence it is suggested that in the case of containers exceeding 1,200 gallons water capacity, they be tested at approximately 5-year intervals. When valve is of type necessitating removal for testing, container must first be emptied. When type of valve permits, testing may be accomplished by an external lifting device equipped with an indicator to show the pressure equivalent at which it opens.

(i) Safety relief valve assemblies, including their connections, shall be of sufficient size so as to provide the rate of flow required for the container on which they are installed.

(j) A safety relief valve shall be installed between each pair of shut-off valves on liquefied petroleum gas liquid piping so as to relieve into a safe atmosphere. It is recom-

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mended that the start-to-discharge pressure of such relief valves be not in excess of 500 pounds per square inch gauge.

(k) Discharge from safety relief device shall not terminate in any building, nor beneath any building.

B.10. Vaporizer and Housing.

NOTE: For Motor Fuel Vaporizers see Div. IV Sec. 4.7.

(a) Indirect fired vaporizers utilizing steam, water or other heated medium shall be constructed and installed as follows:

1. Vaporizers shall be constructed in accordance with the requirements of the ASME Unfired Pressure Vessel Code or API-ASME Unfired Pressure Vessel Code and shall be permanently marked as follows:

With the code marking signifying the specifications to which vaporizer is constructed.

With the allowable working pressure and temperature for which the vaporizer is designed.

With the outside surface and the inside heat exchange surface expressed in square feet.

With the name or symbol of the manufacturer.

2. Vaporizers having an inside diameter of 6 inches or less which are exempted by paragraph U-1(a) of the 1949 and earlier editions and paragraph U-1(d) of the 1950 edition of the ASME Unfired Pressure Vessel Code shall have a design working pressure of not less than 250 p.s.i. gauge and need not be permanently marked.

3. Heating or cooling coils shall not be installed inside a storage container.

4. Vaporizers may be installed in buildings, rooms, sheds, or lean-tos used exclusively for gas manufacturing or distribution, or in other structures of light, non-combustible construction or equivalent, well ventilated near the floor line and roof.

5. Vaporizers shall have at or near the discharge, a safety relief valve providing an effective rate of discharge in accordance with Appendix B, except as provided in Section 2.3(e) (1).

6. Vaporizers shall be provided with suitable automatic means to prevent liquid passing from the vaporizers to the gas discharge piping.

7. The device that supplies the necessary heat for producing steam, hot water, or other heating medium may be installed in a building, compartment, room or lean-to which shall be ventilated near the floor line and roof to the outside. This device location shall be separated from all compartments or rooms containing liquefied petroleum gas vaporizers, pumps and central gas mixing devices by a wall of substantially fire resistant material and vapor tight construction. This requirement does not apply to the domestic water heaters which may supply heat for a vaporizer in a domestic system.

8. Gas-fired heating systems supplying heat exclusively for vaporization purposes shall be equipped with automatic safety devices to shut off the flow of gas to main burners, if pilot light should fail.

9. Vaporizers may be an integral part of a fuel storage container directly connected to the liquid section or gas section or both.

10. Vaporizers shall not be equipped with fusible plugs for pressure relief.

11. Vaporizer houses shall not have unprotected drains to sewers or sump pits.

(b) Atmospheric vaporizers employing heat from the ground or surrounding air shall be installed as follows:

1. Buried underground, or

2. Located inside building close to a point at which pipe enters the building provided capacity of unit does not exceed one quart.

3. Vaporizers of less than one quart capacity heated by the ground or surrounding air, need not be equipped with safety relief valves provided that adequate tests certified by any of the authorities listed in B.2 demonstrate that the assembly is safe without safety relief valves.

4. Vaporizers designed primarily for domestic service shall be protected against tampering and mechanical injury.

(c) No gas in the liquid phase shall be piped into any building for fuel purposes except:

1. Buildings devoted exclusively to housing equipment for vaporization, pressure reduction, gas mixing, gas manufacturing or distribution.

2. Buildings housing internal combustion engines.

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3. In domestic installations no liquid or gas shall be piped into a building at more than 20 p.s.i. gauge pressure. The initial pressure reducing devices shall be installed outside the building.

(d) Direct gas-fired vaporizers shall be constructed, marked, and installed as follows:

1. (a) With the requirements of the ASME Code that are applicable to the maximum working conditions for which the vaporizer is designed. (See Section B.3.)

(b) With the name of the manufacturer; rated Btu input to the burner; the area of the heat exchange surface in square feet; the outside surface of the vaporizer in square feet; and the maximum vaporizing capacity in gallons per hour.

2. (a) Vaporizers may be connected to the liquid section or the gas section of the storage container, or both; but in any case there shall be at the container a manually-operated valve in each connection to permit completely shutting off when desired, of all flow of gas or liquid from container to vaporizer.

(b) Vaporizers with capacity not exceeding 35 gallons per hour shall be located at least 5 feet from container shut-off valves. Vaporizers having capacity of more than 35 gallons but not exceeding 100 gallons per hour shall be located at least 10 feet from the container shut-off valves. Vaporizers having a capacity greater than 100 gallons per hour shall be located at least 15 feet from container shut-off valves.

3. Vaporizers may be installed in buildings, rooms, housings, sheds, or lean-tos used exclusively for gas manufacturing or distribution. Such structures shall be of non-combustible construction or equivalent, and well ventilated near the floor line and roof. See Section B.9(a) for venting of relief valves.

4. Vaporizers shall have at or near the discharge, a safety relief valve providing an effective rate of discharge in accordance with Appendix B. Relief valve shall be so located as not to be subjected to temperatures in excess of 140° F.

5. Vaporizers shall be provided with suitable automatic means to prevent liquid passing from the vaporizer to the gas discharge piping of the vaporizer.

6. Vaporizers shall be provided with means for manually turning off the gas to the main burner and pilot.

7. Vaporizers shall be equipped with automatic safety devices to shut off the flow of gas to main burners if pilot light should fail. When flow through pilot exceeds 2000 Btu per hour, the pilot also shall be equipped with automatic safety device to shut off the flow of gas to the pilot should the pilot flame be extinguished.

8. Pressure regulating and pressure reducing equipment if located within 10 feet of a direct fired vaporizer shall be separated from the open flame by a substantially airtight non-combustible partition or partitions.

9. Except as provided in Sec. B.10(d) (3) the following minimum distances shall be maintained between direct fired vaporizers and nearest important buildings or group of buildings or line of adjoining property which may be built upon:

10 ft. for vaporizers having a capacity of 15 gallons per hour or less vaporizing capacity.

25 ft. for vaporizers having a vaporizing capacity of 16 to 100 gallons per hour.

50 ft. for vaporizers having a vaporizing capacity exceeding 100 gallons per hour.

10. No direct fired vaporizer shall raise the product pressure within the storage container over the pressure set out in the second column of table in Section 2.1(a).

11. No direct fired vaporizer shall be connected to a container that has a storage capacity in gallons, less than 10 times the hourly capacity of the vaporizer in gallons.

12. Vaporizers shall not be provided with fusible plugs for pressure relief.

13. Vaporizer shall not have unprotected drains to sewers or sump pits.

(e) Direct gas-fired tank heaters shall be constructed and installed as follows:

1. Direct gas-fired tank heaters, and tanks to which they are applied, shall only be installed aboveground.

2. Tank heaters shall be permanently marked with the name of the manufacturer, the rated Btu input to the burner, and the maximum vaporizing capacity in gallons per hour.

3. Tank heaters may be an integral part of a fuel storage container directly connected to the container liquid section, or vapor section, or both.

4. Tank heaters shall be provided with a means for manually turning off the gas to the main burner and pilot.

5. Tank heaters shall be equipped with an automatic safety device to shut off the flow of gas to main burners, if pilot light should fail. When flow through pilot exceeds

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2000 Btu per hour, the pilot also shall be equipped with automatic safety device to shut off the flow of gas to the pilot should the pilot flame be extinguished.

6. Pressure regulating and pressure reducing equipment if located within 10 feet of direct fired tank heater shall be separated from the open flame by a substantially airtight noncombustible partition.

7. The following minimum distances shall be maintained between a storage tank heated by a direct fired tank heater and nearest important building or group of buildings or line of adjoining property which may be built upon:

10 ft. for storage containers of less than 500 gallons capacity.

25 ft. for storage containers of 500 to 1200 gallons capacity.

50 ft. for storage containers of over 1200 gallons capacity.

8. No direct fired tank heater shall raise the product pressure within the storage container over 75 per cent of the pressure set out in the second column of the table of Section 2.1(a).

9. No direct fired tank heater shall be connected to a container that has a storage capacity in gallons, less than 10 times the hourly vaporizing capacity of the tank heater in gallons.

B.11. Filling Densities.

(a) The "filling density" is defined as the per cent ratio of the weight of the gas in a container to the weight of water the container will hold at 60° F. All containers shall be filled according to the following filling densities:

MAXIMUM PERMITTED FILLING DENSITY.

Specific Gravity at 60°	Aboveground Containers		Underground Containers
	0 to 1200 Gals. Total Water Cap.	Over 1200 Gals. Total Water Cap.	All Capacities
.473—.480	38%	41%	42%
.481—.488	39	42	43
.489—.495	40	43	44
.496—.503	41	44	45
.504—.510	42	45	46
.511—.519	43	46	47
.520—.527	44	47	48
.528—.536	45	48	49
.537—.544	46	49	50
.545—.552	47	50	51
.553—.560	48	51	52
.561—.568	49	52	53
.569—.576	50	53	54
.577—.584	51	54	55
.585—.592	52	55	56
.593—.600	53	56	57
.601—.608	54	57	58
.609—.617	55	58	59
.618—.626	56	59	60
.627—.634	57	60	61

(b) The maximum liquid volume in per cent of the total container capacity may be determined for LP-Gases at any liquid temperature by using the formula shown in Appendix D.

(c) The maximum liquid volume in per cent of total container capacity shown in Appendix E may be used in lieu of the preceding Table B.11 (a) to determine the maximum quantity that may be placed in a container.

(d) Any contained including mobile cargo tanks and portable tank containers regardless of size or construction, shipped under I.C.C. jurisdiction or constructed in accordance with I.C.C. Specifications shall be filled according to I.C.C. requirements.

B.12. Transfer of Liquids.

(a) At least one attendant shall remain close to the transfer connection from the time

the connections are first made until they are finally disconnected, during the transfer of product.

(b) Containers shall be filled or used only upon authorization of the owner.

(c) Gas or liquid shall not be vented to the atmosphere to assist in transferring contents of one container to another [except as provided in 4.4(d)].

(d) Fuel supply containers shall be gauged and charged only in the open air or in buildings especially provided for that purpose.

(e) The maximum vapor pressure of the product at 100° F. which may be transferred into a container shall be in accordance with Section 2.1, 3.1, and 4.2. (For I.C.C. containers use I.C.C. requirements.)

(f) Marketers and users shall exercise precaution to assure that only those gases for which the system is designed, examined, and listed, are employed in its operation, particularly with regard to pressures.

(g) Pumps or compressors shall be designed for use with LP-Gas. When compressors are used they shall normally take suction from the vapor space of the container being filled and discharge to the vapor space of the container being emptied. When low temperatures so reduce the vapor pressure that the compressor will not function satisfactorily, the compressor may take suction directly from the air and discharge through a suitable moisture removing medium to the container being emptied.

B.13. Tank Car or Transport Truck Unloading Points and Operations.

(a) The track of tank car siding shall be relatively level.

(b) A TANK CAR CONNECTED sign, as covered by I.C.C. (Interstate Commerce Commission) rules, shall be installed at the active end or ends of the siding while the tank car is connected for unloading.

(c) While cars are on sidetrack for unloading, the wheels at both ends shall be blocked on the rails.

(d) A man shall be in attendance at all times while the tank car, cars or trucks are being unloaded.

(e) The pipe line to which the unloading hoses are connected shall be equipped with a back flow check valve to prevent discharge of the LP-Gas from the receiving container and line in case of line hose and fittings rupture.

(f) The tank car or transport truck unloading point should be located with due consideration to the following:

1. Proximity to railroads and highway traffic.
2. The distance of such unloading point from adjacent property.
3. With respect to buildings on installer's property.
4. Nature of occupancy.
5. Topography.
6. Type of construction of buildings.
7. Number of tank cars or transport trucks that may be safely unloaded at one time.
8. Frequency of unloading.

(g) Where practical, the distance of the unloading point should conform to the distances in B.5(a), except that lesser distances may be used, keeping in mind the above items and upon approval of the authority having jurisdiction.

B.14. Instructions.

(a) Personnel performing installation, operation and maintenance work must be properly trained in such function.

B.15. Electrical Connections and Open Flames.

(a) All electrical equipment in vaporizer houses, except those housing direct fired vaporizers, pumphouses and cylinder filling rooms, or other similar locations shall be of the type approved for use in Class I, Group D, Hazardous Locations of the National Electrical Code.

(b) Open flames or other sources of ignition shall not be permitted in vaporizing houses except those housing direct fired vaporizers, pump houses, cylinder-filling rooms, or other similar locations. No direct fired vaporizers shall be permitted in pumphouses or cylinder-filling rooms.

B.16. Liquid Level Gauging Device.

(a) Containers, including I.C.C. cylinders, with water capacity less than 200 lbs. shall be filled by weight, except containers covered by Div. IV.

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(b) Each container, except containers filled by weight, shall be equipped with a liquid level gauging device of approved design. These gauges shall be used in filling containers as required in B.11.

(c) All gauging devices shall be arranged so that the maximum liquid level for butane, for a 50-50 mixture of butane and propane, and for propane, to which the container may be filled is readily determinable. The gallonage capacity (B.11), whether for cylindrical or spherical containers, and whether for use with aboveground or underground containers shall be marked on either the system nameplate or gauging device or part may be on the system nameplate and part on the gauging device.

(d) Gauging devices that require bleeding of the product to the atmosphere, such as the rotary tube, fixed tube and slip tube, shall be so designed that the bleed valve maximum opening is not larger than a No. 54 drill size, unless provided with excess flow valve.

(e) Gauging devices shall have a design working pressure of at least 250 lb. per square inch gauge.

(f) Length of fixed tube device shall be designed to indicate the maximum level to which the container may be filled for the product contained. This level shall be based on the volume of the product at 40° F. at its maximum permitted filling density for aboveground containers and at 50° F. for buried containers. Refer to Appendix F for calculating filling point for which tube shall be designed.

(g) When a fixed tube device is used on containers other than I.C.C., the length of the dip tube, expressed in inches carried out to one decimal place and prefixed with the letters "DT," shall be stamped on the exterior of the device. When a fixed tube device is used on I.C.C. containers, the length of the dip tube expressed in inches carried out to one decimal place and prefixed with the letters "DT" shall be stamped on the exterior of the device and on the container.

(h) gauge glasses of the columnar type shall be restricted to filling plants where the fuel is withdrawn in the liquid phase only. They shall be equipped with valves having metallic handwheels, with excess-flow valves, and with extra heavy glass adequately protected with a metal housing applied by the gauge manufacturer. They shall be shielded against the direct rays of the sun. Gauge glasses of the columnar type are prohibited on tank trucks, and on motor fuel tanks, and on containers used in domestic, commercial and industrial installations.

(i) Gauging devices of the float, or equivalent type which do not require flow for their operation and having connections extending to a point outside the container do not have to be equipped with excess flow valves provided the piping and fittings are adequately designed to withstand the container pressure and are properly protected against mechanical damage and breakage.

B.17. Use of Approved Appliances.

(a) New domestic and commercial gas consuming appliances shall not be installed unless their correctness as to design, construction and performance is certified by one of the following:

1. Determined by a nationally recognized testing agency adequately equipped and competent to perform such services and shall be evidenced by the attachment of its seal or label to such gas appliances. This agency shall be one which maintains a program of national inspection of production models of gas appliances at least once each year on the manufacturer's premises. Approval by the American Gas Association Laboratories, as evidenced by the attachment of its listing symbol or Approval Seal to gas appliances and a certificate or letter certifying approval under the above-mentioned requirements, or listing by Underwriters' Laboratories, Inc., shall be considered as constituting compliance with the provisions of this section.

2. Approval by the authority having jurisdiction.

(b) Any appliance that was originally manufactured for operation with a gaseous fuel other than LP-Gas and is in good condition may be used with LP-Gas only after it is properly converted, adapted and tested for performance with LP-Gas before the appliance is placed in use.

DIVISION I.

CYLINDER SYSTEMS.

(Sometimes called Bottled Gas.)

Division I applies specifically to systems utilizing containers constructed in accordance with the Interstate Commerce Commission Specifications. All Basic Rules apply to this Division unless otherwise noted in the Basic Rules.

1.1. Marking of Containers.

(a) All containers, shall be marked in accordance with the Interstate Commerce Commission regulations. Additional markings not in conflict with the Interstate Commerce Commission regulations may be used.

(b) Except as provided in 1.1(c) each container shall be marked with its minimum water capacity in pounds or other identified unit of weight.

(c) If a container is filled and maintained only by the owner or his representative and if the water capacity of each container is identified by a code, compliance with paragraph 1.1(b) is not required.

(d) Each container shall be marked with its tare weight in pounds or other identified unit of weight including all permanently attached fittings but not the cap.

1.2. Description of a Division I System.

(a) A Division I system shall include the container base or bracket, containers, container valves, connectors, manifold valve assembly, regulators and relief valves.

1.3. Location of Containers and Regulating Equipment.

(a) Containers shall not be buried below ground. However, this shall not prohibit the installation in a compartment or recess below grade level, such as a niche in a slope or terrace wall which is used for no other purpose, providing that the container and regulating equipment are not in contact with the ground and the compartment or recess is drained and ventilated horizontally to the outside air from its lowest level, with the outlet at least five feet away from any building opening which is below the level of such outlet. Except as provided in Sec. 1.7, the discharge from safety reliefs shall be located not less than five feet horizontally away from any building opening which is below the level of such discharge. Discharge from any safety relief device shall not terminate in any building, nor beneath any building unless such space is well ventilated to the outside.

(b) Containers shall be set upon firm foundation or otherwise firmly secured; the possible effect on the outlet piping of settling shall be guarded against by a flexible connection or special fitting.

1.4. Container Valves and Accessories.

(a) Valves in the assembly of multiple container systems shall be arranged so that replacement of containers can be made without shutting off the flow of gas in the system.

NOTE: This provision is not to be construed as requiring an automatic change-over device.

(b) Regulators and low pressure relief devices shall be rigidly attached to the cylinder valves, cylinders, supporting standards, the building walls or otherwise rigidly secured, and shall be so installed that the elements will not affect their operation.

NOTE: The use of locks is not usually desirable because it prevents access to gas controls in case of emergency.

(c) Valves and connections to the containers shall be protected while in transit, in storage, and while being moved into final utilization, as follows:

1. By setting into recess of container to prevent possibility of their being struck if container is dropped upon a flat surface, or

2. By ventilated cap or collar, fastened to container capable of withstanding blow from any direction equivalent to that of a 30-pound weight dropped 4 feet. Construction must be such that a blow will not be transmitted to valve or other connection.

(d) When containers are not connected to the system, the outlet valves shall be kept tightly closed or plugged, even though containers are considered empty.

(e) Containers which are recharged at the installation shall be provided with excess flow or back flow check valves to prevent the discharge of container contents in case of failure of the filling or equalizing connections.

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1.5. Safety Devices.

(a) Containers shall be provided with safety devices as required by the Interstate Commerce Commission regulations.

(b) When the delivery pressure from the final stage regulator is not more than 5 lb. the low pressure side shall be equipped with a relief valve, set to start to discharge at not less than two times, and not more than three times the delivery pressure, but not more than 5 pounds in excess of the delivery pressure. When the delivery pressure is more than 5 pounds the relief valve shall be set to start to discharge at not less than $1\frac{1}{4}$ times and not more than two times the delivery pressure. This requirement may be waived on liquid feed systems utilizing tubing specified in B.7(b). When a regulator or pressure relief valve is installed inside a building the relief valve and the space above the regulator and relief valve diaphragms shall be vented to the outside air with the discharge outlet located not less than 5 feet horizontally away from any opening into the building which is below such discharge. (These provisions do not apply to individual appliance regulators when protection is otherwise provided; nor to Section 1.7. In buildings devoted exclusively to gas distribution purposes, the space above the diaphragm need not be vented to the outside.)

1.6. Reinstallation of Containers.

(a) If due to be retested, containers shall not be reinstalled until they have been retested and otherwise maintained in accordance with currently effective regulations of the I.C.C.

1.7. Use of Gas for Industrial Applications Where Oxygen Is Not Required.

(a) Where portability of containers is necessary making their location outside the building or structure impracticable, containers may be located for use but not for storage inside the building or structure, only: where gas is to be used for industrial processing or repair work in an industrial building or structure being employed for industrial purposes; or where it is to be used in the construction, repair or improvement of buildings or structures and their fixtures and equipment. Such installations are subject to the following additional rules:

1. The regulator employed may be connected directly to the cylinder valve or located on a manifold which is connected to the cylinder valve. The regulator must be of a type suitable for use with liquefied petroleum gas.

2. The aggregate capacity of the containers connected to each portable manifold shall not exceed 250 pounds of gas by weight, and not more than one such manifold with containers may be located in the same room unless separated by at least 50 feet.

3. Manifolds and fittings connecting containers to the pressure reducing regulator inlets shall be designed to withstand without rupture at least 500 p.s.i. gauge.

4. Containers, regulating equipment and manifolds, shall be located where they are not subjected to excessive rise in temperature, mechanical injury or tampering by unauthorized persons.

1.8. Permissible Product.

(a) A product shall not be placed in a container marked with a service pressure less than four-fifths of the maximum vapor pressure of product at 130° F.

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DIVISION II.

SYSTEMS UTILIZING CONTAINERS OTHER THAN I.C.C.

Division II applies specifically to systems utilizing storage containers other than those constructed in accordance with Interstate Commerce Commission specifications. All Basic Rules apply to this Division unless otherwise noted in the Basic Rules.

2.1. Design Working Pressure and Classification of Storage Containers.

(a) Storage containers shall be designed and classified as follows:

Container Type	For Gases with Vapor Press. Not to Exceed lb. per sq. in. gauge at 100° F.	Minimum Design and Working Pressure of Container lb. per sq. in. gauge	
		ASME U-68, U-69	ASME 1950 edition API-ASME
80*	80*	80*	100*
100	100	100	125
125	125	125	156
150	150	150	187
175	175	175	219
200	215	200	250

* New storage containers of the 80 type have not been authorized since Dec. 31, 1947.

(b) The shell or head thickness of any container shall not be less than 3/16 inch.

NOTE: Because of low soil temperature usually encountered, and the insulating effect of the earth, the average vapor pressure of products stored in underground containers will be materially lower than when stored aboveground. This reduction in actual operating pressure therefore provides a substantial corrosion allowance for these containers when installed underground.

2.2. Container Valves and Accessories, Filler Pipes and Discharge Pipes.

(a) The filling pipe inlet terminal shall not be located inside a building. For containers with a water capacity of 125 gallons or more, such terminals shall be located not less than 10 feet from any building, see B.5(a), and preferably not less than 5 feet from any driveway, and shall be located in a protective housing built for the purpose.

(b) The filling connection shall be fitted with one of the following:

1. Combination back-pressure check valve and excess flow valve;
2. One double or 2 single back-pressure check valves;
3. A positive shut-off valve, in conjunction with either,
 - (a) An internal back-pressure valve, or
 - (b) An internal excess flow valve.

(c) All openings in a container shall be equipped with approved automatic excess flow valves except in the following: filling connections as provided in 2.2(b); safety relief connections, liquid level gauging devices as provided in B.6(d), B.16(d) and B.16(i); pressure gauge connections as provided in B.6(e), as provided in 2.2(d) and (f) and (g).

(d) No excess flow valve is required in the withdrawal service line providing the following are complied with:

1. Such systems' total water capacity does not exceed 1,200 U. S. gallons.
2. The discharge from the service outlet is controlled by a suitable manually operated shut-off valve:
 - (a) threaded directly into the service outlet of the container; or
 - (b) is an integral part of a substantial fitting threaded into or on the service outlet of the container; or
 - (c) threaded directly into a substantial fitting threaded into or on the service outlet of the container.
3. The shut-off valve is equipped with an attached handwheel or the equivalent.
4. The controlling orifice between the contents of the container and the outlet of the shut-off valve does not exceed 5/16 in. in diameter for vapor withdrawal systems and 3/8 in. in diameter for liquid withdrawal systems.

5. An approved pressure-reducing regulator is directly attached to the outlet of the shut-off valve and is rigidly supported, or that an approved pressure-reducing regulator is attached to the outlet of the shut-off valve by means of a suitable flexible connection

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provided the regulator is rigidly supported and properly protected on or at the tank (see 2.8).

(e) All inlet and outlet connections except safety relief valves, liquid level gauging devices and pressure gauges on containers of 1,200 gallons water capacity, or more, and on any container used to supply fuel directly to an internal combustion engine, shall be labeled to designate whether they communicate with vapor or liquid space. Labels may be on valves.

(f) In lieu of an excess flow valve; openings may be fitted with a quick-closing internal valve which except during operating periods shall remain closed. The internal mechanism for such valves may be provided with a secondary control which shall be equipped with a fusible plug (not over 220° F. melting point) which will cause the internal valve to close automatically in case of fire.

(g) Not more than two plugged openings shall be permitted on a container of 1,200 gallons or less water capacity.

2.3. Safety Devices.

(a) GENERAL: All safety devices shall comply with the following:

1. All container safety relief devices shall be located on the containers and shall have direct communication with the vapor space of the container.

2. In industrial and gas manufacturing plants, discharge pipe from safety relief valves on pipe lines within a building shall discharge vertically upward and shall be piped to a point outside a building.

3. Safety relief device discharge terminals shall be so located as to provide protection against mechanical injury and such discharge pipes shall be fitted with loose rain caps. Return bends and restrictive pipe fittings shall not be permitted.

4. If desired, discharge lines from two or more safety relief devices located on the same unit, or similar lines from two or more different units, may be run into a common discharge header, provided that the cross-sectional area of such header be at least equal to the sum of the cross-sectional area of the individual discharge lines, and that the setting of safety relief valves are the same.

5. Each storage container of 1,200 gallons water capacity or over shall be provided with a suitable pressure gauge.

6. When the delivery pressure from the final stage regulator is not more than 5 pounds, the low pressure side shall be equipped with a relief valve, set to start to discharge at not less than two times, and not more than three times the delivery pressure, but not more than 5 pounds in excess of the delivery pressure. When the delivery pressure is more than 5 pounds, the relief valve shall be set to not less than $1\frac{1}{4}$ times and not more than two times the delivery pressure. This requirement may be waived on liquid feed systems utilizing tubing specified in B.7(b). When a regulator or pressure relief valve is installed inside a building, the relief valve and the space above the regulator and relief valve diaphragms shall be vented to the outside air with the discharge outlet located not less than 5 feet horizontally away from any opening into the building which is below such discharge. (These provisions do not apply to individual appliance regulators when protection is otherwise provided. In buildings devoted exclusively to gas distribution purposes, the space above the diaphragm need not be vented to the outside.)

7. Discharge from any safety relief device shall not terminate in any building; nor beneath any building unless such space is well ventilated to the outside.

(b) ABOVEGROUND CONTAINERS: Safety devices for aboveground containers shall be provided as follows:

1. Containers of 1,200 gallons water capacity or less which may contain liquid fuel when installed aboveground, either permanently or temporarily, shall have the rate of discharge specified in Appendix A provided by spring-loaded relief valve or valves, or by a combination of such relief valves and suitable fuse plugs; provided the total discharge area of the fuse plugs in each container does not exceed .25 sq. in. and the spring-loaded relief valve provides at least 30% of the required rate of discharge.

2. The fusible metal of the fuse plugs shall have a yield temperature of 208° F. minimum and 220° F. maximum. Relief valves and fuse plugs shall have direct communication with the vapor space of the container.

3. On a container having a water capacity greater than 125 gallons, the discharge from the safety relief valves shall be vented away from the container upward and unobstructed to the open air in such a manner as to prevent any impingement of

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escaping gas upon the container; loose fitting rain caps shall be used. Suitable provision shall be made for draining condensate which may accumulate in the discharge pipe [see B.9(1)].

4. On aboveground containers of 125 gallons water capacity or less the discharge from safety relief devices shall be located not less than 5 feet horizontally away from any opening into the building below the level of such discharge.

5. On aboveground containers of more than 125 gallons of water capacity the discharge from safety relief device shall discharge vertically upward. On containers of more than 2,000 gallons water capacity, the discharge from the safety relief devices shall be piped upward to a point at least 7 feet above the container.

(c) **UNDERGROUND CONTAINERS:** On containers of 1,200 gallons water capacity or less, which are installed underground and which contain no liquid fuel until buried and covered, the rate of discharge of spring loaded relief valve installed thereon may be reduced to a minimum of 30 per cent of the specified rate of discharge in Appendix A. Containers so protected shall not be uncovered after installation until the liquid fuel has been removed therefrom. Containers which may contain liquid fuel before being installed underground and before being completely covered with earth are to be considered aboveground containers when determining the rate of discharge requirement of the relief valves.

(d) On underground containers of more than 2,000 gallons water capacity, the discharge from safety relief devices shall be piped vertically and directly upward to a point at least 7 feet above the ground.

1. On underground installations where there is a probability of the manhole or housing becoming flooded, the discharge from vent lines should be above the possible water level. All manholes or housings shall be provided with ventilated louvers or their equivalent, the area of such openings equalling or exceeding the combined discharge areas of the safety relief valves, fuse plugs and other vent lines which discharge their content into the manhole housing.

(e) **VAPORIZERS:** Safety devices for vaporizers shall be provided as follows:

1. Vaporizers of less than one quart total capacity, heated by the ground or the surrounding air, need not be equipped with safety relief valves provided that adequate tests certified by any of the authorities listed in B.2, demonstrate that the assembly is safe without safety relief valves.

2. No vaporizer shall be equipped with fusible plugs.

3. In industrial and gas manufacturing plants, safety relief valves on vaporizers within a building shall be piped to a point outside the building and be discharged upward.

2.4. Reinstallation of Containers.

Containers installed underground may be reinstalled underground or aboveground if they do not show evidence of harmful external corrosion or other damage. Where containers are reinstalled underground, the corrosion-resistant coating shall be put in good condition. (See Paragraph 2.6(e), see also Sec. 2.3 for relief valve requirements.)

2.5. Capacity of Liquid Containers.

No liquid storage container shall exceed 30,000 standard U. S. gallons capacity.

2.6. Installation of Storage Containers.

(a) Containers installed aboveground except as provided in Par. 2.6(f) shall be provided with substantial masonry or noncombustible structural supports on firm masonry foundation.

(b) Aboveground containers shall be supported as follows:

1. Horizontal containers shall be mounted on saddles in such a manner as to permit expansion and contraction. Every container shall be so supported as to prevent the concentration of excessive loads on the supporting portion of the shell. Structural metal supports may be employed when they are protected against fire in an approved manner. Suitable means of preventing corrosion shall be provided on that portion of the container in contact with the foundations or saddles.

2. Containers of 1,200 gallons water capacity or less may be installed with non-fireproofed ferrous metal supports if mounted on concrete pads or footings, and if the distance from the outside bottom of the container shell to the ground does not exceed 24 in.

(c) Any container may be installed with non-fireproofed ferrous metal supports if mounted on concrete pads or footings, and if the distance from the outside bottom of the

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container to the ground does not exceed five (5) feet, provided the container is in an isolated location and such installation is approved by the authority having jurisdiction.

(d) Containers buried underground shall be so placed that the top of container is not less than 2 feet below the surface of the ground, except that where ground conditions make compliance with this requirement impracticable, installation shall be made otherwise to prevent mechanical injury. It will not be necessary to cover the portion of the container to which manhole and other connections are affixed. When necessary to prevent floating, containers shall be securely anchored or weighted.

(e) Underground containers shall be set on a firm foundation (firm earth may be used) and surrounded with soft earth or sand well tamped in place. As a further means of resisting corrosion, the container, prior to being placed underground, shall be given a protective coating satisfactory to the authority having jurisdiction. Such protective coating shall be equivalent to hot dip galvanizing, or to two preliminary coatings of red lead followed by a heavy coating of coal tar or asphalt, and the container thus coated shall be so lowered into place as to prevent abrasion or other damage to the coating.

(f) Containers with foundations attached (portable or semi-portable containers with suitable steel "runners" or "skids" and popularly known in the industry as "skid tanks") shall be designed, installed and used in accordance with these rules subject to the following provisions: (See also Sec. 3.16.)

1. If they are to be used at a given general location for a temporary period not to exceed 6 months they need not have fire-resisting foundations or saddles but shall have adequate ferrous metal supports.

2. They shall not be located with the outside bottom of the container shell more than 5 ft. above the surface of the ground unless fire-resisting supports are provided.

3. The bottom of the skids shall not be less than 2 inches or more than 12 inches below the outside bottom of the container shell.

4. Flanges, nozzles, valves, fittings and the like, having communication with the interior of the container shall be protected against mechanical injury.

NOTE: It is recommended that such containers should have outlets only in the heads.

5. When not permanently located on fire-resisting foundations, piping connections shall be sufficiently flexible to minimize possibility of breakage or leakage of connections if container settles, moves, or is otherwise displaced.

6. Skids, or lugs for attachment of skids, shall be secured to container in accordance with the code or rules under which the container is designed and built (with a minimum factor of safety of four) to withstand loading in any direction equal to four times the weight of the container and attachments when filled to the maximum permissible loaded weight.

(g) Field welding where necessary shall be made only on saddle plates or brackets which were applied by manufacturer of tank.

(h) For aboveground containers secure anchorage or adequate pier height shall be provided against possible container flotation wherever sufficiently high flood water might occur.

2.7. Dikes and Embankments.

(a) Because of the pronounced volatility of liquefied petroleum gases, dikes are not normally necessary, hence their general requirement is not justified as in the case of gasoline or similar flammable liquids.

(b) When, in the opinion of the authority having jurisdiction, owing to the slope of the ground or other local conditions, aboveground containers are liable in case of rupture or overflow to endanger adjacent property, each container shall be surrounded by a dike of such capacity as may be considered necessary to meet the needs of the situation under consideration by the aforesaid inspection authority but in no case more than the capacity of the container in question.

2.8. Protection of Tank Accessories, Grounding.

(a) Valves, regulating, gauging and other tank accessory equipment shall be protected against tampering and mechanical damage. Such accessories shall also be so protected during the transit of tanks intended for installation underground.

NOTE: The use of locks is not usually desirable because it prevents access in case of emergency.

(b) All connections to underground containers shall be located within a substantial dome, housing or manhole and with access thereto protected by a substantial cover.

(c) Aboveground containers exceeding 1,200 gallons water capacity shall be electrically grounded in an effective manner. (See report of NFPA Committee on Static Electricity, NFPA No. 77.)

2.9. Drips for Condensed Gas.

Where vaporized gas on low-pressure side of system may condense to a liquid at normal operating temperatures and pressures, suitable means shall be provided for re-vaporization of the condensate.

2.10. Instructions.

For installations which require operation of equipment by the user, instructions shall be furnished to the personnel responsible for the operation of the system.

2.11. Damage from Vehicles.

When damage to LP-Gas systems from frequent fast moving vehicular traffic is a possibility, precautions against such damage shall be taken.

2.12. Pits and Drains.

Every effort should be made to avoid the use of pits, except pits fitted with automatic flammable vapor detecting devices. No drains or blow-off lines shall be directed into or in proximity to sewer systems used for other purposes.

2.13. General Provisions Applicable to Bulk Filling Plants and Systems in Industrial Plants.

(a) Where standard watch service is provided it shall be extended to the LP-Gas installations and personnel properly trained.

(b) Adequate lights shall be provided to illuminate storage containers, control valves and other equipment.

(c) Suitable roadways or means of access for extinguishing equipment such as wheeled extinguishers or fire department apparatus shall be provided.

(d) The container storage area shall be fenced with "manproof" fencing or otherwise protected where necessary, and at least two means of access through the fencing shall be provided.

2.14. Container Filling Plants.

(a) The container filling room shall be located not less than:

1. 10 ft. from bulk storage containers.
2. 25 ft. from line of adjoining property which may be built upon.

(b*) Tank truck filling station outlets shall be located not less than:

1. 25 ft. from line of adjoining property which may be built upon.
2. 10 ft. from pumps and compressors if housed in one or more separate buildings.

(c) The pumps and compressors may be located in the container filling room or building but if they are housed in one or more separate buildings they shall be located not less than:

1. 10 ft. from bulk storage tanks.
2. 25 ft. from line of adjoining property which may be built upon.
3. 25 ft. from sources of ignition.

(d) Where a part of the container filling building is to be used for a boiler room or where open flames or similar sources of ignition exist or are employed, the space to be so occupied shall be separated from container filling room by a partition wall or walls of fire resistant construction continuous from floor to roof or ceiling. Such separation walls shall be without openings and shall be joined to the floor, other walls and ceiling or roof in a manner to effect a permanent gas tight joint.

2.15. Fire Protection.

(a) In industrial installations involving containers of 150,000 gallons aggregate capacity or more, provision shall be made for an adequate supply of water at the container site for fire protection in the container area, unless other adequate means for fire control are provided. Water hydrants shall be readily accessible and so spaced as to provide water protection for all containers. Sufficient lengths of fire hose shall be provided at each hydrant location on a hose cart, or other means provided to facilitate easy movement of the hose in the container area. It is desirable to equip the outlet of each hose line with a combination fog nozzle. A shelter shall be provided to protect the hose and its conveyor from the weather.

* Distances given may be reduced when approved by the authority having jurisdiction.

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(b) If in the opinion of the authority having jurisdiction, the use of fixed water spray nozzles will better serve to protect the containers and area, these may be specified. The method of release of water spray and alarm facilities shall be at the discretion of the authority having jurisdiction.

2.16. Painting.

(a) Aboveground containers shall be kept properly painted.

2.17. Lighting.

(a) At the discretion of the authority having jurisdiction, industrial installations shall be illuminated.

2.18. Vaporizers for Internal Combustion Engines.

(a) The provisions of Section 4.7 shall apply.

2.19. Gas Regulating and Mixing Equipment for Internal Combustion Engines.

(a) The provisions of Section 4.8 shall apply.

DIVISION III.

TANK TRUCKS, SEMI-TRAILERS AND TRAILERS FOR TRANSPORTATION OF LIQUEFIED PETROLEUM GASES.

Division III applies specifically to containers and pertinent equipment mounted on trucks, semi-trailers and trailers used for the transportation of liquefied petroleum gases. All Basic Rules apply to this Division unless otherwise noted in the Basic Rules.

Containers and pertinent equipment for tank trucks and trailers for the transportation of liquefied petroleum gas, in addition to complying with the requirements of these standards, should also comply with the requirements of the Interstate Commerce Commission and those of any other regulatory body which may apply.

3.1. Design Working Pressure and Classification of Containers.

(a) Containers shall be designed and classified as follows:

Container Type	For Gases with Vapor Press. Not to Exceed lb. per sq. in. gauge at 100° F.	Minimum Design Working Pressure of Container lb. per sq. in. gauge	
		ASME U-68, U-69	ASME U-200, U-201 ASME 1950 Edition API-ASME
80*	80*	80*	100*
100	100	100	125
125	125	125	156
150	150	150	187
175	175	175	219
200	215	200	250

* New storage cargo containers of 80 type have not been authorized since Dec. 31, 1947.

(b) The shell or head thickness of any container shall not be less than 3/16 inch.

3.2. Container Valves and Accessories.

(a) All valves shall be safeguarded against mechanical injury due to collision, over-turning or other emergency.

(b) Filling connections shall be provided with approved automatic back pressure check valves, excess flow check valves or quick closing internal valves to prevent excessive escape of gas in case the filling connection is broken, except that where the filling and discharge connect on a common opening in the container shell, and that opening is fitted with a quick-closing internal valve as specified in Sec. 3.2(c), the automatic valve shall not be required. In addition every inlet and outlet connection shall be equipped with a manually or automatically operated shut-off valve.

(c) All other connections to containers, except safety relief and liquid level gauge connections, shall be provided with suitable automatic excess flow valves, or in lieu thereof may be fitted with quick-closing internal valves, which, except during delivery operations,

shall remain closed. The control mechanism for such valves may be provided with a secondary control remote from the delivery connections and such control mechanism shall be provided with a fusible section (melting point not over 220° F.) which will cause the internal valve to close automatically in case of fire.

(d) All container inlets and outlets, except safety relief valves, liquid level gauging devices, and pressure gauges, shall be labeled to designate whether they communicate with vapor or liquid space. Labels may be on valves.

(e) Each container shall be equipped with a suitable pressure gauge.

3.3. Piping and Fittings.

(a) All piping, tubing and fittings shall be securely mounted and protected against damage and breakage.

(b) All ferrous threaded fittings and threaded pipe shall be designed for a minimum working pressure of 250 p.s.i.g.

3.4. Safety Devices.

(a) The discharge from safety relief valves shall be vented away from the container upward and unobstructed to the open air in such a manner as to prevent any impingement of escaping gas upon the container; loose fitting rain caps shall be used. Size of discharge lines from safety relief valves shall not be smaller than the nominal size of the relief valve outlet connection. Suitable provision shall be made for draining condensate which may accumulate in the discharge pipe.

(b) Any portion of piping between tank and pump inlet or any wet hose which at any time may be closed at each end should be provided with relief valve to prevent excessive pressure developing.

(c) If tank filling connections are located at a distance of more than 20 feet from the truck, the pump discharge shall be provided with an excess flow valve to prevent escape of liquid in the event of hose or connection failure beyond the pump.

3.5. Tank Truck Fuel Systems.

(a) In the event liquefied petroleum gas is used in the truck engine, the fuel system shall be installed in accordance with Division IV.

3.6. Transfer of Liquids.

(a) **LOADING TRUCK, TRAILER, AND SEMI-TRAILER CONTAINERS.** Truck, trailer, and semi-trailer containers shall be loaded by weight, by meter, or by suitable liquid level gauging device (see Sec. B.16).

(b) Pumps or compressors shall be designed for use with LP-Gas; they shall be properly protected and may be mounted upon liquefied petroleum gas tank trucks, trailers, or semi-trailers and may be driven by the truck motor power take-off or internal combustion engine, hand, mechanical, hydraulic or electrical means. On electrical means of pumping the electrical installation shall be in accordance with the requirements of the National Electrical Code for Class I, Group D, Hazardous Locations. The pumps, except constant speed centrifugal pumps, shall be equipped with suitable pressure actuated by-pass valves permitting flow from pump discharge to pump suction or back to container when the pump discharge pressure rises above a predetermined point. Pump discharge from positive displacement pumps shall also be equipped with a spring-loaded safety valve of non-leaking type, set at a pressure not to exceed 35 per cent higher than the predetermined setting of the by-pass valve.

3.7. Mounting Containers on Truck, Semi-Trailer or Trailer Vehicle.

(a) A suitable "stop" or "stops" shall be mounted on the truck, semi-trailer or trailer or on the container, in such a way that the container shall not be dislodged from its mounting due to the vehicle coming to a sudden stop. Back slippage shall also be prevented by proper methods.

(b) A suitable "hold down" device shall be provided which will anchor the container at one or more places on each side of the container to the truck, semi-trailer or trailer frame so as to minimize loosening due to vibration.

3.8. Electrical Equipment and Lighting.

(a) Tank trucks, tank trailers, and tank semi-trailers, shall not be equipped with any artificial light other than electricity. Lighting circuits shall have suitable over-current protection (fuses or automatic circuit breakers); the wiring shall have sufficient carrying

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capacity and mechanical strength, and shall be suitably secured, insulated and protected against physical damage.

3.9. Trailers and Semi-Trailers.

(a) All trailers shall be firmly and securely attached to the vehicle drawing them by means of suitable drawbars, supplemented by safety chains.

(b) Every trailer or semi-trailer shall be equipped with a reliable system of brakes, and adequate provision shall be made for its efficient operation from the driver's seat of the vehicle drawing the trailer.

(c) Every trailer or semi-trailer shall be provided with side lights and a tail light.

(d) Four-wheeled trailers shall be of a type of construction which will prevent the towed vehicle from whipping or swerving from side to side dangerously and will cause it to follow substantially in the path of the towing vehicle.

(e) Where a fifth wheel is employed, it shall be ruggedly designed, securely fastened to both units, and equipped with a positive locking mechanism which will prevent separation of the two units, except by manual release.

3.10. Metallic Connections.

(a) Tank, chassis, axles and springs shall be metallically connected.

3.11. Exhaust Systems.

(a) The exhaust system, including muffler and exhaust line, shall have ample clearance from the fuel system and combustible materials. Truck muffler and exhaust pipe shall be placed as far as practicable from any tank valves, pumps or piping.

(b) Muffler cut-out shall not be used.

3.12. Extinguishers Required.

(a) Each truck or tractor shall be provided with at least one approved hand fire extinguisher of a type suitable for gas fires. Extinguishers of the dry chemical or carbon dioxide type are suitable. Extinguishers should have a net content of not less than 15 pounds.

3.13. Smoking Prohibited.

(a) Tank truck drivers and their helpers shall be instructed not to smoke or allow smoking around the truck on the road, while making deliveries, filling the trucks or making any repairs to tank truck or tank trailer.

3.14. Protection Against Collision.

(a) Each tank truck and trailer shall be provided with properly attached steel bumpers or chassis extension which shall be so arranged as to protect the tank, piping, valves and fittings in case of collision.

3.15. Chock Blocks.

(a) Chock blocks shall be provided for the rear wheels and chained permanently to the vehicle. Such blocks shall be stored in suitable carriers when not in use. These blocks shall be placed at rear wheels to prevent rolling of the vehicle whenever it is parked including loading and unloading operations.

3.16. Skid Tanks.

(a) Skid tanks shall not be used in place of tank trucks, tank trailers or tank semi-trailers for regular deliveries. They shall be employed only where there is a necessity for their joint use as a transport and storage unit. Where skid tanks are used they shall comply with all requirements of this Division and with Section 2.6(f).

DIVISION IV.

LIQUEFIED PETROLEUM GAS AS A MOTOR FUEL.

Division IV applies to internal combustion engines, fuel containers and pertinent equipment for the use of liquefied petroleum gases as a motor fuel on easily moveable, readily portable units including self-propelled vehicles.

Fuel containers and pertinent equipment for internal combustion engines using liquefied petroleum gas where installation is of the stationary type are covered by Division II of these Standards. Division IV does not apply to containers for transportation of liquefied petroleum gases nor to marine fuel use. All Basic Rules apply to this Division, unless otherwise noted in the Basic Rules.

4.1. General.

(a) Fuel may be used from the cargo containers of a truck while in transit, but not from cargo containers on trailers or semi-trailers. The use of fuel from the cargo containers to operate stationery engines is permitted providing wheels are securely blocked.

(b) Passenger carrying vehicles shall not be fueled with passengers aboard.

4.2. Design Working Pressure and Classification of Fuel Containers.

(a) Fuel containers shall be designed and classified as follows:

Container Type	For Gases with Vapor Press. Not to Exceed lb. per sq. in. gauge at 100° F.	Minimum Design Working Pressure of Container lb. per sq. in. gauge	
		ASME U-200, U-201 ASME 1950 Edition API-ASME	ASME U-68, U-69
200*	215	250	200

* Container type may be increased by increments of 25. (The minimum design working pressure of ASME U-68 or U-69 containers shall be 100 per cent of the container type designation. The minimum design working pressure of ASME U-200, U-201, ASME 1950 Edition and API-ASME containers shall be 125 per cent of the container type designation.)

(b) All container inlets and outlets except safety relief valves and gauging devices shall be labeled to designate whether they communicate with vapor or liquid space. Labels may be on valves.

(c) Containers manufactured and maintained under Interstate Commerce Commission specifications and regulations may be used as fuel containers. When so used they shall conform to all rules in this section, except construction and marking requirements.

4.3. Location of Fuel Supply Containers.

(a) Containers shall be located in a place and in a manner to minimize the possibility of damage to the container. Containers located in the rear of trucks and buses, when protected by substantial bumpers, will be considered in conformance with this requirement. Fuel containers on buses shall be installed as far from the engine as practicable, and the passenger space shall be sealed from the container space to prevent direct seepage of gas to the passenger space. The container compartment shall be vented to the outside. In case the fuel container is mounted near the engine or the exhaust system, the container shall be shielded against direct heat radiation.

(b) Containers shall be installed with as much clearance as practicable but never less than the minimum road clearance of the vehicle under maximum spring deflection. This minimum clearance shall be to the bottom of the container or to the lowest fitting on the container or housing, whichever is lower.

(c) Fuel containers for engine on buses, except taxicabs, shall be permanently installed. Proper anchorage shall be provided to prevent jarring loose, slipping, or rotating of cylinders.

(d) Containers shall be secured in place on the vehicle by fastenings designed and constructed with minimum factor of safety of four to withstand loadings in any direction equal to four times the filled weight of the container. Field welding where necessary shall be made only on saddle plates, lugs, or brackets, originally attached to the container by the tank manufacturer.

RULES AND REGULATIONS

(e) Containers from which vapor only is to be withdrawn shall be installed and equipped with suitable connections to minimize the accidental withdrawal of liquid.

4.4. Valves and Accessories.

(a) Container valves and accessories shall have a rated working pressure of at least 250 lbs. per sq. in. gauge, and shall be of a type suitable for liquefied petroleum gas service.

(b) The filling connection shall be fitted with an approved double back-pressure check valve, or a positive shut-off in conjunction with an internal back-pressure check valve. On a removable container the filler valve may be a hand operated shut-off valve with an internal excess flow valve. Main shut-off valves on the container on liquid and vapor lines must be readily accessible.

(c) With the exceptions of 4.4(d), filling connections equipped with approved automatic back-pressure check valves, and safety relief valves, all connections to containers having openings for the flow of gas in excess of a No. 54 drill size shall be equipped with approved automatic excess flow valves to prevent discharge of content in case connections are broken. This requirement may be waived when such exception is recognized by the testing and listing of the containers and fittings by any of the authorities listed in paragraph B.2.

(d) In the case of containers used solely in farm tractor service, and filled at a point at least 50 feet from any important building, the fixed liquid level gauging device may be so constructed that the outward flow of container content exceeds that passed by a No. 54 drill size opening, but in no case shall the flow exceed that passed by a No. 31 drill size opening. An excess flow valve is not required. Fittings equipped with such restricted drill size opening and container on which they are used shall be marked to indicate the size of the opening.

(e) All valves and connections on containers shall be adequately protected to prevent damage due to accidental contact with stationary objects or from loose objects thrown up from the road, and all valves shall be safeguarded against damage due to collision, overturning or other accident. On removable type containers the protection for the fittings must be permanently attached to the container.

4.5. Piping, Tubing and Fittings.

(a) All piping from fuel container to first stage regulator shall be wrought iron or steel (black or galvanized), brass or copper pipe; or seamless copper, brass or steel tubing. Steel pipe or tubing shall have a minimum wall thickness of 0.049 inches, and shall be adequately protected against exterior corrosion. Copper tubing shall be Type K or L or equivalent having a minimum wall thickness of 0.032 inches. Approved flexible connections (see B.8) may be used between container and regulator or between regulator and gas-air mixer within the limits of approval by any of the authorities listed in B.2(a). The use of aluminum piping or tubing is prohibited. In the case of removable containers an approved flexible connection shall be used between the container and the fuel line.

(b) All piping shall be installed, braced and supported so as to reduce to a minimum the possibility of vibrations, strains or wear.

4.6. Safety Devices (Refer also to B-9).

(a) Interstate Commerce Commission containers shall be provided with safety devices as required by the Interstate Commerce Commissions' regulations. A spring-loaded safety relief valve shall be the primary relieving device.

(b) The discharge outlet from safety relief devices shall be located on the outside of enclosed spaces and as far as practicable from possible sources of ignition, and vented upward in such a manner as to prevent impingement of escaping gas upon containers, or parts of vehicle. Loose fitting raincaps shall be used.

(c) When a discharge line from the container safety relief device is used, it shall be sized and located and maintained so as not to interfere with the required flow of gas from the safety relief device. Such discharge line shall be able to withstand the pressure resulting from the discharge of vapor when the safety relief valve is in the full open position.

4.7. Vaporizers.

(a) Vaporizers and any part thereof and other devices that may be subjected to container pressure, shall have a design working pressure of at least 250 lb. per sq. in. gauge.

(b) Each vaporizer shall have a valve or suitable drain plug. It shall be located at or

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near the lowest portion of the section occupied by the water or other heating medium, which will permit substantially complete draining of the vaporizer.

(c) Vaporizers shall be securely fastened so as to minimize the possibility of becoming loosened.

(d) Each vaporizer shall be permanently marked at a visible point as follows:

(1) With design working pressure of the fuel containing portion in lbs. per sq. in. gauge.

(2) With the water capacity of the fuel containing portion of the vaporizer in pounds.

(e) Devices to supply heat directly to a fuel container shall be equipped with an automatic device to cut off the supply of heat before the pressure inside the fuel container reaches 80 per cent of the start to discharge pressure setting of the safety relief device on the fuel container.

(f) Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

4.8. Gas Regulating and Mixing Equipment.

(a) Approved automatic pressure reducing equipment shall be installed in a secure manner between the fuel supply container and gas-air mixer for the purpose of reducing the pressure of the fuel delivered to the gas-air mixer.

(b) An approved automatic shut-off valve or an approved regulator shall be provided in the fuel system at some point ahead of the inlet of the gas-air mixer, designed to prevent flow of fuel to the mixer when the engine is not running.

(c) The source of the air for combustion shall be completely isolated from the passenger compartment, ventilating system or air conditioning system.

4.9. Capacity of Containers.

(a) No single fuel container used on passenger carrying vehicles, shall exceed 200 gallons water capacity. No single fuel container on other vehicles normally operating on the highway shall exceed 300 gallons water capacity except as provided in 4.1(a).

DIVISION V.

STORAGE OF CONTAINERS NOT INSTALLED FOR USE AT FINAL UTILIZATION POINT.

Containers stored or in the process of filling or handling at container filling plants with permanently located bulk storage tanks or at plants devoted primarily to the storage and distribution of other petroleum products are not covered by the provisions of this division.

5.1. Storage on Premises of User.

(a) Containers on the premises of users that are not in use or connected for use shall be stored according to the requirements applying to containers connected for use in Section B.5; except that portable I.C.C. containers on the premises of industrial users may be stored as follows:

1. Cylinders, stored inside a building except those in actual use or attached ready for use, shall be limited to a total capacity of 2,000 cubic feet. For storage in excess of 2,000 cubic feet total gas capacity, cylinders shall be kept outside or in a separate room or compartment or in a special building.

2. Cylinders may be stored in the open provided valves and safety devices are protected against accumulation of ice and snow. Cylinders permitted inside of buildings shall be stored away from highly combustible materials and in locations where they are not liable to excessive rise in temperature, mechanical injury or tampering by unauthorized persons. Empty cylinders shall have their valves closed in storage and when shipped.

3. Storage rooms or Compartments. Where cylinders are stored inside buildings*, they shall be enclosed in a separate room or compartment of ample size. The walls or partitions, floor and ceiling of such room or compartment shall be of one of the types of construction listed below or other construction equivalent in strength and fire resistance; walls or partitions shall be continuous from floor to ceiling and shall be

* The word "buildings" as used in this section means a building having occupancy other than that directly associated with storage of containers, filled and empty or the manifolding of cylinders used in cutting and industrial purposes.

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securely anchored. At least one wall of an inside cylinder storage room shall be an exterior wall.

Gypsum or cement plaster at least $\frac{3}{4}$ of an inch thick on metal lath on each side of a stud partition.

Expanded metal lath encased in solid cement plaster not less than $2\frac{1}{2}$ inches thick.

Reinforced concrete.

Brick.

Tile, gypsum or concrete block (cement plaster on each side to a thickness of $\frac{1}{4}$ inch).

Openings from a cylinder storage room or compartment to other parts of the building shall be protected by a fire door classified and labeled as suitable for use in Class B situations as defined in the Standards for the Protection of Openings in Walls and Partitions Against Fire (No. 80).*

The door shall be of the swinging type and close into a rabbet or otherwise be made tight to prevent passage of flame around edges; it shall be self-closing, and if fastened open, shall be arranged to close automatically in case of fire originating inside or outside of the cylinder storage room or compartment. Windows, if provided in partitions shall be wired glass in approved metal frames.

Special buildings, rooms or compartments shall have no open flame for heating or lighting and shall be well ventilated. Empty cylinders shall be stored with valve end up, and cylinder cap in place.

5.2. Storage for Re-Sale.

(a) If containers other than I.C.C. contain any gas they shall be stored according to the requirements applying to such containers when connected for use in Section B.5.

(b) I.C.C. containers may be stored in a building, a separate room or compartment used exclusively for storing gas containers. Such room or compartment shall not be below ground level and shall have no openings communicating with other occupancies. The space below the floor shall be of solid fill or properly ventilated to open air. The building or compartment or room shall be vented top and bottom to the outside only and the outlet from such vents shall be at least 5 feet horizontally from any other opening into any building. Such storage of containers shall not be adjacent to a school, church, hospital, athletic field or other points of public gathering.

(c) Containers may be stored in the open provided they are stored within a suitable enclosure where necessary to prevent tampering. Containers shall not be stored adjacent to a school, church, hospital, athletic field or other points of public gathering. The valves and safety devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(d) Where the storage exceeds 10,000 pounds of gas at one storage location, such storage shall be located at least twenty-five (25) feet from important buildings, or regularly busy main thoroughfares.

(e) Readily combustible material shall not be piled within ten (10) feet of containers, in storage. A warning, to keep open flames and fire away, shall be conspicuously posted.

(f) Containers shall not be stored, whether full or empty, inside a store or place of business frequented by the public nor shall such containers not connected for use be stored outside property lines. Containers may be located inside such buildings or on public property for display purposes, provided they are gas-free.

5.3. General.

(a) Containers in storage shall have valves closed even though they may be empty.

(b) Containers which require valve protecting caps shall have such caps in place hand tight while in storage.

* See National Fire Codes, Volume III, also published by the National Board of Fire Underwriters, 85 John Street, New York, N. Y. (Pamphlet No. 80).

DIVISION VI.

CYLINDER SYSTEMS FOR COOKING AND HEATING INSTALLATIONS
ON HIGHWAY MOBILE VEHICLES.

Division VI applies specifically to systems using LP-Gas on mobile and other highway mobile vehicles. All basic rules apply to Division VI unless otherwise noted in this division or in the basic rules.

Division VI does not apply to systems used on commercial cargo carrying vehicles.

Where liquefied petroleum gas is supplied to a permanently parked vehicle from a system not mounted on and secured to the unit, Division I or II shall apply.

6.1. Construction of Containers.

(a) Containers shall be constructed in accordance with the specifications of the Interstate Commerce Commission except as provided in (b).

(b) Cylinders fabricated and marked prior to July 1, 1949, according to the requirements of the ASME or the API-ASME Unfired Pressure Vessel Code, shall be acceptable provided they comply with all other requirements set forth in this Division.

6.2. Marking of Containers.

(a) All containers except those included in 6.1(b) shall be marked in accordance with the Interstate Commerce Commission regulations. Additional markings not in conflict with Interstate Commerce Commission regulations may be used.

6.3. Description of a Division VI System.

(a) A Division VI system shall include: housing, container bracket or support, containers, container valves, manifold valve assembly (two-cylinder systems), regulator and relief valves.

6.4. Location of Containers and Regulating Equipment.

(a) No container shall be installed, transported, or stored (even temporarily) inside any vehicle covered by Division VI.

(b) Containers, control valves, and regulating equipment enclosed in a housing, and comprising a complete system shall be mounted:

1. On the chassis of the vehicle as close to the hitch as practicable, or
2. In a recess gas tight to the inside of the mobile unit and only accessible and vented from the outside.

6.5. Container Valves and Accessories.

(a) Valves in the assembly of a two-cylinder system shall be arranged so that replacement of containers can be made without shutting off the flow of gas to the appliances.

NOTE: This provision is not to be construed as requiring an automatic change-over device.

(b) Shut-off valves on the containers shall be protected in transit, in storage, and while being moved into final utilization as follows:

1. By setting into recess of container to prevent possibility of their being struck if container is dropped upon a flat surface, or
2. By ventilated cap or collar fastened to container capable of withstanding a blow from any direction equivalent to that of a 30-lb. weight dropped 4 ft. Construction must be such that a blow will not be transmitted to valve.

6.6. Safety Devices.

(a) I.C.C. Containers shall be provided with safety-relief devices as required by the Regulations of the Interstate Commerce Commission.

(b) Containers constructed in accordance with the rules of the ASME or the API-ASME shall be provided with safety relief devices as required by B.9 hereof.

(c) The delivery side of the gas pressure regulator shall be equipped with a safety-relief device set to start to discharge at a pressure not less than 2 times and not more than 3 times the delivery pressure of the regulator.

6.7. System Design and Service Line Pressure.

(a) Systems shall be of the vapor-withdrawal type.

(b) Systems supplying fuel to appliances in the liquid or in the liquid-gaseous phase are prohibited.

RULES AND REGULATIONS

(c) Vapor, at a pressure not over 18-in. water column shall be delivered from the system into the service piping supplying the appliances.

6.8. System Enclosure and Mounting.

(a) Housings or enclosures shall be designed to provide proper ventilation.

(b) Hoods, domes, or portions of cabinets required to be removed from replacement of containers shall incorporate means for clamping them firmly in place, and prevent them from working loose during transit.

(c) Provision shall be incorporated in the assembly to hold the containers firmly in position and prevent their movement during transit.

(d) Containers shall be mounted on a substantial support or base secured firmly to the vehicle chassis.

(e) When the container support is used inside the frame members, the maximum depth shall not exceed 7 in. from the top of the chassis to provide sufficient road clearance.

6.9. Piping and Fittings.

(a) Regulators shall be of lightweight construction and connected directly to the cylinder valve inlet, or mounted securely by means of a support bracket and connected to the cylinder valve or valves with an approved high pressure flexible connection.

(b) An expansion loop in the gas service piping or an approved flexible connection between the regulator outlet and the gas service piping, shall be used.

(c) Only seamless drawn copper tubing having an outside diameter not less than $\frac{3}{8}$ in. and a wall thickness of not less than 0.032 inch, shall be used for gas service lines.

(d) Approved gas tubing fittings shall be employed for making tubing connections.

(e) The vapor fuel line shall be firmly fastened in a protected location under the vehicle and outside and below any insulation or false bottom. Fastenings shall be such as to prevent abrasion or injury to the tubing from vibration.

(f) The gas line shall be installed to enter the vehicle through rubber grommets or equivalent in the floor directly beneath the appliance which it serves. When a branch line is required, the tee connection shall be in the main gas line and located under the vehicle.

(g) All parts of the system assembly shall be so designed and secured as to preclude such parts working loose during transit.

6.10. Appliances.

(a) All gas consuming appliances shall have their correctness as to design, construction, and performance for trailer coach and similar service certified as follows:

1. Determined by a nationally recognized testing agency adequately equipped and competent to perform such services and shall be evidenced by the attachment of its seal or label to such gas appliances. This agency shall be one which maintains a program of national inspection of production models of gas appliances at least once each year on the manufacturer's premises. Approval by the American Gas Association Laboratories, as evidenced by the attachment of its Listing Symbol or Approval Seal to gas appliances and a certificate or letter certifying approval under the above-mentioned requirements, or listing by Underwriters' Laboratories, Inc., shall be considered as constituting compliance with the provisions of this section, or

2. Approval by the enforcing authority having jurisdiction.

(b) All gas-fired space heaters and water heaters shall be of the full vented type, vented to the outside of the vehicle. Air for combustion shall come from the outside of the trailer. Each such appliance shall be equipped with a device designed to shut off the supply of gas to the main burner and to the pilot in the event the pilot flame is extinguished.

(c) Appliances shall be located inside a vehicle so that a fire at an appliance will not block all egress of persons from the vehicle.

6.11. General Precautions.

(a) Containers, except those covered in 6.1(b), shall be marked, maintained and retested in accordance with the Regulations of the Interstate Commerce Commission.

(b) Retests shall be made with properly approved* equipment, and the containers shall be stamped with the date of retest. This is the responsibility of the owner of the containers.

* Bureau of Explosives—Association of American Railroads, 30 Vesey St., New York, N. Y.

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(c) No container shall be charged with fuel unless it bears the proper markings of the code under which it was fabricated, and in addition with its minimum water capacity and the tare weight of the container in pounds.

(d) No I.C.C. containers shall be refilled which has been involved in a fire until it has been requalified for service according to I.C.C. Regulations.

(e) No ASME or API-ASME container shall be refilled which has been involved in a fire until it has been retested in accordance with the requirements for its original hydrostatic test and found to be suitable for continued service.

(f) No container shall be filled without the consent of the owner thereof.

(g) A permanent caution plate shall be provided on the outside of the system enclosure and adjacent to the consuming appliances. It shall include the following items:

WARNING.

1. Be sure all appliance valves are closed before opening container valve.
2. Connections at the appliances, regulators and containers shall be checked periodically for leaks with soapy water or its equivalent.
3. Never use a match or flame when checking for leaks.
4. Cylinder valves must be closed when vehicle is in transit.

6.12. Filling of Containers.

(a) Containers shall be filled in accordance with B.16(a) and one of the following:

1. At a properly equipped container filling plant which complies with all applicable requirements of these standards. Such filling plant may be located in a trailer camp provided that the entire filling operation, including the storage container, is located not less than 50 feet from the nearest trailer, important building or group of buildings, or line of adjoining property which may be built upon, and not less than 25 feet from any public street or highway. Such filling plant and storage containers shall be enclosed by manproof fencing or otherwise protected from tampering or physical damage. The access to the enclosed area shall be kept locked when unattended.

2. From a tank truck complying with the provisions of Division III. Containers installed at the trailer may be filled at that location. Other container filling locations shall be not less than 25 feet from the nearest trailer, important building or group of buildings or public street or highway, whenever more than 3 containers are to be filled or the total gas capacity of the container or containers to be filled exceeds 100 pounds at one location. Private streets, private roads, or private rights of way shall not be termed public streets or highways. No vapor or liquid shall be vented to the atmosphere during the filling operation. The container filling operation shall only be performed by qualified personnel and during daylight hours.

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APPENDIX A.

Minimum Required Rate of Discharge in cubic feet per minute of LP-Gas at 120% of the maximum permitted start to discharge pressure for safety relief valves to be used on containers other than those constructed in accordance with Interstate Commerce Commission specification. Discharge measured at 60° F. and atmospheric pressure (14.7 absolute).

D = outside diameter of container in feet and fractions thereof.

U = overall length of container in feet and fractions thereof.

For spherical containers use $D \times D$ instead of $D \times U$.

Air Conversion Factors given following the Table are the factors by which the discharge rates for LP-Gas are to be multiplied in order to get corresponding discharge rates for air.

D × U	Container Type (See Sections 2.1, 3.1 and 4.2)				
	100	125	150	175	200
10	695	720	745	775	825
11	765	790	820	855	920
12	835	860	890	930	1000
13	900	920	965	1005	1090
14	970	1005	1040	1080	1170
15	1045	1075	1110	1155	1250
16	1110	1145	1185	1230	1335
17	1180	1215	1255	1310	1420
18	1250	1290	1330	1385	1500
19	1320	1360	1400	1460	1580
20	1390	1430	1475	1540	1660
21	1460	1500	1550	1610	1740
22	1530	1570	1620	1680	1820
23	1610	1640	1690	1760	1910
24	1670	1720	1760	1840	1980
25	1740	1780	1840	1910	2060
26	1810	1860	1910	1990	2130
27	1880	1920	1980	2060	2210
28	1950	1990	2060	2140	2300
29	2020	2060	2130	2210	2370
30	2080	2140	2210	2290	2450
31	2160	2200	2280	2360	2530
32	2230	2270	2360	2440	2620
33	2290	2350	2430	2510	2700
34	2360	2410	2500	2590	2770
35	2440	2490	2580	2670	2850
36	2500	2560	2650	2740	2940
37	2570	2630	2720	2810	3000
38	2640	2700	2790	2890	3090
39	2710	2770	2860	2960	3160
40	2770	2840	2930	3050	3250
41	2850	2910	3010	3120	3330
42	2920	2980	3080	3200	3410
43	2990	3050	3150	3270	3490
44	3060	3120	3220	3350	3570
45	3130	3190	3300	3420	3650
46	3190	3260	3370	3500	3730
47	3260	3340	3440	3570	3810
48	3330	3400	3510	3650	3890
49	3400	3470	3580	3720	3970
50	3470	3550	3660	3800	4050
51	3540	3620	3730	3880	4120
52	3610	3680	3800	3960	4200

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D × U	Container Type (See Sections 2.1, 3.1 and 4.2)				
	100	125	150	175	200
53	3670	3760	3870	4030	4270
54	3750	3830	3950	4100	4360
55	3810	3900	4020	4170	4430
56	3890	3970	4090	4250	4510
57	3960	4040	4160	4320	4590
58	4020	4110	4240	4400	4670
59	4090	4180	4300	4470	4750
60	4160	4250	4370	4540	4780
65	4510	4610	4740	4920	5220
70	4850	4960	5100	5290	5610
75	5200	5300	5460	5650	6000
80	5530	5650	5820	6020	6390
85	5880	6000	6190	6490	6780
90	6220	6350	6550	6700	7180
95	6570	6700	6910	7120	7570
100	6910	7050	7270	7490	7960
105	7260	7400	7620	7860	8360
110	7600	7750	7980	8240	8740
115	7950	8120	8350	8610	9120
120	8300	8470	8700	8980	9500
140	9670	9860	10120	10450	11020
160	11050	11260	11550	11920	12500
180	12420	12660	12970	13400	13900
200	12950	13200	13500	13980	14480
220	13500	13740	14060	14520	15080
240	14040	14290	14620	15100	15650
260	14570	14860	15190	15660	16230
280	15110	15400	15730	16220	16820
300	15650	15930	16300	16800	17400
320	16190	16470	16850	17460	17990
340	16700	17000	17400	17920	18560
360	17250	17550	17950	18490	19150
380	17800	18100	18500	19040	19730
400	18300	18640	19050	19600	20300
420	18860	19200	19610	20180	20900
440	19400	19760	20180	20740	21470
460	19940	20300	20720	21300	22040
480	20480	20840	21280	21860	22620
500	21010	21390	21820	22400	23210
520	21550	21930	22390	22900	23790
540	22090	22480	22930	23560	24380
560	22620	23030	23490	24130	24960
580	23170	23580	24040	24690	25540
600	23710	24120	24600	25250	26120
620	24250	24650	25150	25800	26700

For D × U over 620, Discharge Capacity to be Calculated in Direct Proportion to Preceding Values. The rate of discharge may be interpolated for intermediate values of D × U.

Air Conversion Factors.

(Factors by which discharge rates for LP-Gas are to be multiplied in order to get corresponding discharge rates for air.)

Container Type				
100	125	150	175	200
1.162	1.142	1.113	1.078	1.010

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APPENDIX B.

Minimum Required Rate of Discharge of Relief Valves for Liquefied Petroleum Gas Vaporizers.

1. Steam Heated Vaporizers.

The minimum rate of discharge for relief devices on steam heated vaporizers shall be determined by the following formula:

$$Q = M (C Sh + F So)$$

Where:

Q = Minimum rate of discharge in cubic feet per minute of LP-Gas, at 60° F. and 14.7 p.s.i.a.

C = 30,000 Btu per hour or 150% of the hourly per square foot design steam input rating, whichever is larger.

Sh = Inside heat exchange surface of vaporizer in square feet.

This is total area exposed to steam heating medium.

So = Outside surface of vaporizer shell in square feet directly in contact with LP-Gas. This is the outside surface which could be exposed to flame in case of fire around vaporizer and which would directly heat LP-Gas in contact with it.

F = Heat input in Btu per hour computed using Fetterly's* formula and assuming propane in the vaporizer with a wall thickness of 3/16 inch. Values given in following table.

M = Constant, the value of which for different types of vaporizers is given in the following table:

Type	F	ASME Code	ASME Code
		U-68 or U-69	U-200 or U-201
		$\overline{M}$	API-ASME Code $\overline{M}$
80	19100	.00095	.00095
100	18700	.00099	.00099
125	18100	.00103	.00103
140	17900	.00107	.00107
150	17800	.00109	.00109
175	17300	.00116	.00116
200	16900	.00126	.00126

* Annual Report Bureau of Explosives November 27, 1948.

Vaporizers for the purpose of these calculations shall be classified as to type in the same manner as storage tanks in paragraph 2.1.

The above formula is based on the maximum heat input which might occur simultaneously from the steam heating medium and from an outside fire source through the shell of the vaporizer.

2. Water Heated Vaporizers.

The minimum rate of discharge required for relief devices on water heated vaporizers shall be determined by using the formula given for steam heating in "1" above. (Steam Heated Vaporizers.)

3. Direct Fired Vaporizers.

The minimum rate of discharge required for relief devices on direct fired vaporizers shall be determined by applying Fetterly's formula to the sum of the outside surface and the heating surface which is expressed in the following formula:

$$Q = M F (Sh + So)$$

The values of these terms and constants are given in 1 above (Steam Heated Vaporizers), except Sh = Heat exchange area in contact with heated flue gases and directly in contact with LP-Gases.

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APPENDIX C.

Minimum Required Rate of Discharge* of Liquefied Petroleum Gas for
Safety Relief Valves for Motor Fuel Supply Containers.
Cubic feet per minute of LP-Gas at 60° F. and atmospheric pressure (14.7 p.s.i.a.).

CONTAINER TYPE.**

	140	150	175	200
D × U †	LP-Gas	LP-Gas	LP-Gas	LP-Gas
10	740	745	775	885
15	1090	1110	1155	1250
20	1450	1475	1540	1660
Over 20	To be calculated in direct proportion to above values			

* Rate of Discharge determined in accordance with Section B.9(b).

** See Section 4.2 for "Container Type."

† D = Outside Diameter of container in feet and fractions thereof;

U = Overall length of container in feet and fractions thereof.

NOTE: The rate of discharge may be interpolated for intermediate values of D × U.

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APPENDIX D.

Method of Calculating Maximum Liquid Volume Which Can Be Placed in a Container at Any Liquid Temperature.

The quantity of LP-Gas which may be placed in a container is dependent upon the temperature of the liquid and the maximum permitted filling density in addition to the size of the container.

The filling density depends on: The size of tank, whether it is installed aboveground or underground, and the specific gravity of the liquid LP-Gas at 60° F. placed in the container. Filling density values are given in Section B.11. The liquid temperature should be obtained by measuring the temperature of the liquid LP-Gas in the container such as with a thermometer placed in a thermometer well installed in the tank.

Knowing the liquid temperature and the filling density, the maximum volume of liquid LP-Gas which may be placed in a container can be determined as follows:

$$V = \frac{D}{G \times F}$$

Where

V = maximum liquid volume (in per cent of total container capacity) which shall be placed in a container when the liquid temperature is T.

D = filling density from B.11(a) in per cent.

G = specific gravity of LP-Gas at 60° F. placed in container.

F = correction factor from following table for correcting liquid volume from 60° F. to volume at temperature T. The correction factor is obtained by finding the specific gravity at 60° F. (G) in the column at the top of the table and coming down this column until the actual temperature T is found. The correction factor corresponding to this specific gravity and temperature is then read. Interpolation is permitted.

T = temperature of liquid LP-Gas in container in degrees Fahrenheit.

After obtaining V from the above formula the actual maximum gallons of LP-Gas which may be placed in a container is obtained by multiplying the water capacity of the container by

$$\frac{V}{100}$$

Example:

Assume an aboveground container with 10,000 gallons water capacity

Propane with a specific gravity of 0.508 at 60° F. to be placed in container

Filling density from B.11(a) for aboveground container having a capacity greater than 1200 gallons in which a product having a specific gravity at 60° F. of 0.508 is to be placed is 45%

To determine maximum quantity that may be placed in container when the liquid temperature is 60° F.

$$V = \frac{45 \times 10,000}{0.508 \times 100} = 8850 \text{ gallons}$$

When liquid temperature is 82° F. find correction factor in the table below for specific gravity at 60° F. of 0.508 and a liquid temperature of 82° F. which is 0.963

$$V = \frac{45 \times 10,000}{0.508 \times 0.963 \times 100} = 9,200 \text{ gallons}$$

LIQUID VOLUME CORRECTION FACTORS

Observed Temperature Degrees Fahrenheit	SPECIFIC GRAVITIES AT 60°F./60°F.														
	0.500	Pro- pane 0.5079	0.510	0.520	0.530	0.540	0.550	0.560	iso- Bu- tane 0.5631	0.570	0.580	n- Bu- tane 0.5844	0.590		
	VOLUME CORRECTION FACTORS														
-50...	1.160	1.155	1.153	1.146	1.140	1.133	1.127	1.122	1.120	1.116	1.111	1.108	1.106		
-45...	1.153	1.148	1.146	1.140	1.134	1.128	1.122	1.117	1.115	1.111	1.106	1.103	1.101		
-40...	1.147	1.142	1.140	1.134	1.128	1.122	1.117	1.111	1.110	1.106	1.101	1.099	1.097		
-35...	1.140	1.135	1.134	1.128	1.122	1.116	1.112	1.106	1.105	1.101	1.096	1.094	1.092		
-30...	1.134	1.129	1.128	1.122	1.116	1.111	1.106	1.101	1.100	1.096	1.092	1.090	1.088		
-25...	1.127	1.122	1.121	1.115	1.110	1.105	1.100	1.095	1.094	1.091	1.087	1.085	1.083		
-20...	1.120	1.115	1.114	1.109	1.104	1.099	1.095	1.090	1.089	1.086	1.082	1.080	1.079		
-15...	1.112	1.109	1.107	1.102	1.097	1.093	1.089	1.084	1.083	1.080	1.077	1.075	1.074		
-10...	1.105	1.102	1.100	1.095	1.091	1.087	1.083	1.079	1.078	1.075	1.072	1.071	1.069		
- 5...	1.098	1.094	1.094	1.089	1.085	1.081	1.077	1.074	1.073	1.070	1.067	1.066	1.065		
0...	1.092	1.088	1.088	1.084	1.080	1.076	1.073	1.069	1.068	1.066	1.063	1.062	1.061		
2...	1.089	1.086	1.085	1.081	1.077	1.074	1.070	1.067	1.066	1.064	1.061	1.060	1.059		
4...	1.086	1.083	1.082	1.079	1.075	1.071	1.068	1.065	1.064	1.062	1.059	1.058	1.057		
6...	1.084	1.080	1.080	1.076	1.072	1.069	1.065	1.062	1.061	1.059	1.057	1.055	1.054		
8...	1.081	1.078	1.077	1.074	1.070	1.066	1.063	1.060	1.059	1.057	1.055	1.053	1.052		
10...	1.078	1.075	1.074	1.071	1.067	1.064	1.061	1.058	1.057	1.055	1.053	1.051	1.050		
12...	1.075	1.072	1.071	1.068	1.064	1.061	1.059	1.056	1.055	1.053	1.051	1.049	1.048		
14...	1.072	1.070	1.069	1.066	1.062	1.059	1.056	1.053	1.053	1.051	1.049	1.047	1.046		
16...	1.070	1.067	1.066	1.063	1.060	1.056	1.054	1.051	1.050	1.048	1.046	1.045	1.044		
18...	1.067	1.065	1.064	1.061	1.057	1.054	1.051	1.049	1.048	1.046	1.044	1.043	1.042		
20...	1.064	1.062	1.061	1.058	1.054	1.051	1.049	1.046	1.046	1.044	1.042	1.041	1.040		
22...	1.061	1.059	1.058	1.055	1.052	1.049	1.046	1.044	1.044	1.042	1.040	1.039	1.038		
24...	1.058	1.056	1.055	1.052	1.049	1.046	1.044	1.042	1.042	1.040	1.038	1.037	1.036		
26...	1.055	1.053	1.052	1.049	1.047	1.044	1.042	1.039	1.039	1.037	1.036	1.036	1.034		
28...	1.052	1.050	1.049	1.047	1.044	1.041	1.039	1.037	1.037	1.035	1.034	1.034	1.032		
30...	1.049	1.047	1.046	1.044	1.041	1.039	1.037	1.035	1.035	1.033	1.032	1.032	1.030		
32...	1.046	1.044	1.043	1.041	1.038	1.036	1.035	1.033	1.033	1.031	1.030	1.030	1.028		
34...	1.043	1.041	1.040	1.038	1.036	1.034	1.032	1.031	1.030	1.029	1.028	1.028	1.026		
36...	1.039	1.038	1.037	1.035	1.033	1.031	1.030	1.028	1.028	1.027	1.025	1.025	1.024		
38...	1.036	1.035	1.034	1.032	1.031	1.029	1.027	1.026	1.025	1.025	1.023	1.023	1.022		
40...	1.033	1.032	1.031	1.029	1.028	1.026	1.025	1.024	1.023	1.023	1.021	1.021	1.020		
42...	1.030	1.029	1.028	1.027	1.025	1.024	1.023	1.022	1.021	1.021	1.019	1.019	1.018		
44...	1.027	1.026	1.025	1.023	1.022	1.021	1.020	1.019	1.019	1.018	1.017	1.017	1.016		
46...	1.023	1.022	1.022	1.021	1.020	1.018	1.018	1.017	1.016	1.016	1.015	1.015	1.014		
48...	1.020	1.019	1.019	1.018	1.017	1.016	1.015	1.014	1.014	1.013	1.013	1.013	1.012		
50...	1.017	1.016	1.016	1.015	1.014	1.013	1.013	1.012	1.012	1.011	1.011	1.011	1.010		
52...	1.014	1.013	1.012	1.012	1.011	1.010	1.010	1.009	1.009	1.009	1.009	1.009	1.008		
54...	1.010	1.010	1.009	1.009	1.008	1.008	1.007	1.007	1.007	1.007	1.006	1.006	1.006		
56...	1.007	1.007	1.006	1.006	1.005	1.005	1.005	1.005	1.005	1.005	1.004	1.004	1.004		
58...	1.003	1.003	1.003	1.003	1.003	1.003	1.002	1.002	1.002	1.002	1.002	1.002	1.002		
60...	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000		
62...	0.997	0.997	0.997	0.997	0.997	0.997	0.997	0.998	0.998	0.998	0.998	0.998	0.998		
64...	0.993	0.993	0.994	0.994	0.994	0.994	0.995	0.995	0.995	0.995	0.996	0.996	0.996		
66...	0.990	0.990	0.990	0.990	0.991	0.992	0.992	0.993	0.993	0.993	0.993	0.993	0.993		
68...	0.986	0.986	0.987	0.987	0.988	0.989	0.990	0.990	0.990	0.990	0.991	0.991	0.991		
70...	0.983	0.983	0.984	0.984	0.985	0.986	0.987	0.988	0.988	0.988	0.989	0.989	0.989		
72...	0.979	0.980	0.981	0.981	0.982	0.983	0.984	0.985	0.986	0.986	0.987	0.987	0.987		
74...	0.976	0.976	0.977	0.978	0.980	0.980	0.982	0.983	0.983	0.984	0.985	0.985	0.985		
76...	0.972	0.973	0.974	0.975	0.977	0.978	0.979	0.980	0.981	0.981	0.982	0.982	0.983		
78...	0.969	0.970	0.970	0.972	0.974	0.975	0.977	0.978	0.978	0.979	0.980	0.980	0.981		
80...	0.965	0.967	0.967	0.969	0.971	0.972	0.974	0.975	0.976	0.977	0.978	0.978	0.979		
82...	0.961	0.963	0.963	0.966	0.968	0.969	0.971	0.972	0.973	0.974	0.975	0.976	0.977		
84...	0.957	0.959	0.960	0.962	0.965	0.966	0.968	0.970	0.971	0.972	0.974	0.974	0.975		
86...	0.954	0.956	0.956	0.959	0.961	0.964	0.966	0.967	0.968	0.969	0.971	0.971	0.972		
88...	0.950	0.952	0.953	0.955	0.958	0.961	0.963	0.965	0.966	0.967	0.969	0.969	0.970		
90...	0.946	0.949	0.949	0.952	0.955	0.958	0.960	0.962	0.963	0.964	0.967	0.967	0.968		
92...	0.942	0.945	0.946	0.949	0.952	0.955	0.957	0.959	0.960	0.962	0.964	0.965	0.966		
94...	0.938	0.941	0.942	0.946	0.949	0.952	0.954	0.957	0.958	0.959	0.962	0.962	0.964		
96...	0.935	0.938	0.939	0.942	0.946	0.949	0.952	0.954	0.955	0.957	0.959	0.960	0.961		
98...	0.931	0.934	0.935	0.939	0.943	0.946	0.949	0.952	0.953	0.954	0.957	0.957	0.959		
100...	0.927	0.930	0.932	0.936	0.940	0.943	0.946	0.949	0.950	0.952	0.954	0.955	0.957		
105...	0.917	0.920	0.923	0.927	0.931	0.935	0.939	0.943	0.943	0.946	0.949	0.949	0.951		
110...	0.907	0.911	0.913	0.918	0.923	0.927	0.932	0.936	0.937	0.939	0.943	0.944	0.946		
115...	0.897	0.902	0.904	0.909	0.915	0.920	0.925	0.930	0.930	0.933	0.937	0.938	0.940		
120...	0.887	0.892	0.894	0.900	0.907	0.912	0.918	0.923	0.924	0.927	0.931	0.932	0.934		
125...	0.876	0.881	0.884	0.890	0.898	0.903	0.909	0.916	0.916	0.920	0.925	0.927	0.928		
130...	0.865	0.871	0.873	0.880	0.888	0.895	0.901	0.908	0.909	0.913	0.918	0.921	0.923		
135...	0.854	0.861	0.863	0.871	0.879	0.887	0.894	0.901	0.902	0.907	0.912	0.914	0.916		
140...	0.842	0.850	0.852	0.861	0.870	0.879	0.886	0.893	0.895	0.900	0.905	0.907	0.910		

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APPENDIX E.

Alternate Permitted Maximum Liquid Volumes in Per Cent of Total Container Capacity, for Filling Containers up to 1200 Gallons Total Water Capacity as Specified in B.11(c).

MAXIMUM LIQUID VOLUME PER CENT.

	Aboveground Containers Liq. Temp. Assumed to be 40° F.	Underground Containers Liq. Temp. Assumed to be 50° F.
Propane (Approx. sp. gr. 0.51)	80	89
Mixtures (Approx. sp. gr. 0.55)	83	91
Butane (Approx. sp. gr. 0.58)	86	93

APPENDIX F.

Method of Calculating Maximum Volume of LP-Gas which can be placed in a container for which length of fixed dip tube is set.

1. It is impossible to set out in a table the length of a fixed dip tube for various capacity tanks because of the varying tank diameters and lengths and because the tank may be installed either in a vertical or horizontal position. Knowing the maximum permitted filling volume in gallons, however, the length of the fixed tube can be determined by the use of a strapping table obtained from the container manufacturer. The length of the fixed tube should be such that when its lower end touches the surface of the liquid in the container, the contents of the container will be the maximum permitted volume as determined by the following formula:

2. Formula for determining maximum volume of Liquefied Petroleum Gas for which a fixed length of dip tube shall be set.

$$\frac{\text{Water Cap. (Gals.) of Container}^* \times \text{Filling Density}^{**}}{\text{Sp. Gr. of LP-Gas}^* \times \text{volume Correction Factor}^\dagger \times 100} = \begin{matrix} \text{Maximum} \\ \text{Volume} \\ \text{of} \\ \text{L.P. Gas} \end{matrix}$$

* Measured at 60° F.

** From Section B.11 "Filling Densities."

† For aboveground containers the liquid temperature is assumed to be 40° F. and for underground containers the liquid temperature is assumed to be 50° F. To correct the liquid volumes at these temperatures to 60° F. the following factors shall be used: (See Section B.16(f)).

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Volume Correction Factors.

Specific Gravity	Aboveground	Underground
0.500	1.033	1.017
.510	1.031	1.016
.520	1.029	1.015
.530	1.028	1.014
.540	1.026	1.013
.550	1.025	1.013
.560	1.024	1.012
.570	1.023	1.011
.580	1.021	1.011
.590	1.020	1.010

Example: Assume a 100-gallon total water capacity tank for aboveground storage of propane having a specific gravity of 0.510 at 60° F.

$$\begin{array}{rcl} 100 \text{ (gals.)} \times 42 & & \\ \text{(Filling Density from B.11)} & & 4200 \\ \hline 0.510 \times 1.031 \text{ (Correction Factor from} & = & 52.6 \\ \text{Table in Appendix D)} & & \end{array}$$

4200

— = 79.8 gallons propane, the maximum amount permitted to be placed in a 52.6 100-gallon total water capacity aboveground container equipped with a fixed dip tube.

3. The maximum volume of Liquefied Petroleum gas which can be placed in a container when determining the length of the dip tube expressed as a percentage of total water content of the container is calculated by the following formula:

$$\begin{array}{rcl} \text{Maximum Vol. of LP-Gas (From} & & \text{Maximum} \\ \text{Formula in (2) above} \times 100 & & \text{Per Cent} \\ \hline \text{Total water content of container} & = & \text{of} \\ \text{in gallons} & & \text{L.P. Gas} \end{array}$$

4. The maximum weight of Liquefied Petroleum gas which may be placed in a container for determining the length of a fixed dip tube is determined by multiplying the maximum volume of liquefied petroleum gas obtained by the formula in (2) above by the pounds of liquefied petroleum gas in a gallon at 40° F. for aboveground and at 50° F. for underground containers. For example typical pounds per gallon are specified below:

	Aboveground pounds per gallon	Underground pounds per gallon
Propane	4.37	4.31
N. Butane	4.97	4.92

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ITEMS LISTED BY UNDERWRITERS' LABORATORIES, INC.

Underwriters' Laboratories, Inc., "List of Inspected Gas, Oil, and Miscellaneous Appliances" (published annually with bi-monthly supplements) contains listings of the following items referred to in the foregoing standards. Later lists may include additional items. The latest list should be consulted in each case.

Items Listed	Heading Under Which Listed
Accessory Equipment	Gas & LP Gas Equipment, Compressed
Back Pressure Check Valve	Gas & LP Gas Equipment, Compressed
Compressed Gas Valve	Valves
Controls, Safety Pilot	Accessories (Oil Burner)
Excess Flow Valves	Gas & LP Gas Equipment, Compressed
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Safety Relief Valves	Gas & LP Gas Equipment, Compressed
Shut-Off Valves	Gas & LP Gas Equipment, Compressed
Valves	Gas & LP Gas Equipment, Compressed

Osteopathic Examiners, State Board.

ADOPTED BY THE SOUTH CAROLINA OSTEOPATHIC EXAMINERS.

Pursuant to § 56-1104, S. C. Code of 1952.

(Filed Secretary State's office October 27, 1938.)

1. On the first morning of the examination the applicant shall draw a number card, upon which his name and address shall be written, then sealed in an envelope and handed to the secretary. In the forthcoming examination each applicant shall sign the number drawn by him on his examination paper, and under no circumstances shall his name appear thereon.

2. The envelopes containing the names and numbers of the applicants shall not be open until the examination papers have been handed in, examined by the members of the board and grades tabulated.

3. Only one applicant shall be allowed to sit at a desk during an examination. No communication, either by writing or speaking, shall be allowed between applicants; no applicant shall be allowed to retire from the room during the examination, unless in case of extreme necessity, and then only when accompanied by a member of the board. Any violation of this rule will cancel the examination of the offending applicant.

4. Applicants detected under the influence of alcohol or drugs shall be barred from further examination.

5. All examiners shall remain in the room during the examinations, and assist in same, unless excused by the board.

6. At the conclusion of the examination the examiners shall grade them, each examiner being a committee of one to grade his papers. The board shall hold a meeting later to pass upon and tabulate the grades. No grades shall be changed except during a meeting of the board and in the presence of and with the sanction of a majority. Papers graded below seventy-five per cent must be brought to this tabulation meeting.

7. After the papers are graded and tabulated and their values announced the results shall be final as to failure or non-failure of an applicant. No revision of grades after the adjournment of the board will be permissible, unless same mistake has been found, notice of which mistake or error shall be forwarded to the secretary, who, after notifying the president, shall correct the same.

8. All licenses will be withheld until all necessary credentials have been presented to the secretary.

9. All applicants for re-examination must submit a new application together with a certificate of moral character, and a fee of twenty-five dollars.

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10. Applicants desiring a South Carolina license through reciprocity must present a permanent license in the State from which they bring same. License by reciprocity shall be granted at the discretion of the board, with States having an equal standing.

11. Applicants for license by reciprocity must present to the board satisfactory credentials and evidence as to their fitness for such license.

12. No applicant who has failed to pass the board will be granted a license through reciprocity.

13. Licenses by reciprocity are granted on the basis of examination only.

14. A fee of fifty dollars shall be charged for a license by reciprocity. A fee of ten dollars shall be charged for filling out and certifying to application blanks for license by reciprocity in other States. Personal checks are not accepted.

15. A fee of five dollars shall be charged for a duplicate license issued in case of loss of the original. Personal checks are not accepted.

16. No temporary licenses will be granted.

Pharmaceutical Examiners, State Board of.

ADOPTED BY SOUTH CAROLINA BOARD OF PHARMACEUTICAL EXAMINERS.

Pursuant to § 56-1302, S. C. Code of 1952.

(Filed in Secretary State's office May 6, 1952.)

1. Recognition of standards maintained by Schools or Colleges of Pharmacy or Departments of Pharmacy of Universities.

The School or College of Pharmacy or Department of Pharmacy of Universities referred to in Section 56-1305, S. C. Code of 1952, must be examined and inspected by the Board of Pharmacy of South Carolina or its accrediting agency periodically to see that the School or College of Pharmacy or Department of Pharmacy of the Universities complies with the standards of the Board and its Accrediting Agency as to purpose of College, Faculty, teaching Load and size of Classes, Curriculum and Degrees, Admission Requirements, Attendance, Promotion and Graduation, Student Load, Instruction, Library, Administration, Finances, Physical Plant, Extra Curricular Activities, Miscellaneous Factors and Annual Progress Report. Such School or College of Pharmacy or Department of Pharmacy of a University must be located in a State or Territory of the United States whose accreditation policies are reciprocal with the policies as established and set forth by the Board of Pharmacy of the State of South Carolina and/or its Accrediting Agency.

The Accrediting Agency of the Board of Pharmacy of South Carolina is The American Council on Pharmaceutical Education.

2. Recognition of Practical Experience gained toward licensure as a pharmacist.

The practical experience referred to in Section 56-1306, S. C. Code of 1952, must have been gained in a drug store or pharmacy approved by the Board of Pharmacy of South Carolina as being a proper place for the training of an apprentice pharmacist.

A pharmacy acceptable to the Board as a proper place to obtain practical experience shall conform to the best traditions of pharmacy in the State. It shall have available all necessary equipment for professional service, necessary reference works, in addition to the official standards, current professional journals, and shall meet the following minimum standards:

- (a) The pharmacy must be operated at all times under the supervision of a registered pharmacist and must have signified its willingness to train apprentices or to employ persons desiring to obtain practical experience in accordance with the Pharmacy Laws.
- (b) The Pharmacy must compound and dispense not less than 1000 physicians' prescriptions each year.
- (c) The Pharmacy must have a clear record with respect to the observance of Federal, State and municipal laws and ordinances governing any phase of activity in which it is engaged.
- (d) The supervising pharmacist and the apprentice must notify the Secretary of the Board within ten days of the beginning and ending of the supervised experience.

Police Insurance and Annuity Fund, Board of Commissioners of.

**ADOPTED BY SOUTH CAROLINA STATE BOARD OF COMMISSIONERS OF THE
POLICE INSURANCE AND ANNUITY FUND.**

Pursuant to § 61-307, S. C. Code of 1952.

(Filed Secretary of State's office September 26, 1938.)

1. Regular meetings.

The regular meetings of the board of commissioners of the police insurance and annuity fund of the State of South Carolina shall be held at the board's office in Columbia, on the first Thursday of each month, at eleven o'clock, A. M. Whenever the regular meeting of the board shall occur on a legal holiday, or on an election day, the board shall meet in regular session on the following day at the place and hour above mentioned.

2. Special meetings.

Special meetings may be called by the chairman, or upon the written request of three members of the board. No business shall be transacted at any special meeting of the board except the particular business for the transaction of which the special meeting may be called. Notice of such meeting shall be served upon or sent to each member of the board in due and sufficient time to permit his attendance upon such meeting, and such notice shall state the purpose for which said meeting is called.

3. Quorum.

A majority of all the members of the board shall constitute a quorum, and the vote of the majority of those present and constituting a quorum shall be sufficient to transact business in the absence of the other members of the board.

4. Chairman.

The chairman shall take the chair at the hour to which the board shall have adjourned at the preceding meeting, call the members to order, and direct the secretary to call the roll. He shall cause the journal of the preceding meeting to be read and disposed of unless otherwise ordered by the board. After the approval of the journal, the chairman shall attach his signature thereto.

5. Vice-chairman.

The vice-chairman shall act in the absence of the chairman.

6. Secretary-treasurer.

It shall be the duty of the secretary-treasurer to keep a full and accurate record of all proceedings of the board of commissioners. He shall be empowered to collect all moneys due the fund. He shall make a full and detailed statement at each meeting of the board, or whenever called upon by the board, showing the total amount of money in his hands at the time of the filing of the report, and also an account of receipts and expenditures since his last report. The accumulated funds of the association may be invested in bonds and other securities approved by the board of commissioners. All interest and income received from investments or deposits shall be added to the principal of the fund. He shall execute and deliver a surety bond in such sum as may be prescribed by the board of commissioners for the faithful performance of his duties, the premium of such bond to be paid out of the funds of the fund.

7. Eligibility to membership.

All peace officers, state, county, or municipal, in the State of South Carolina, who are required by the terms of their employment or election to give their time to the preservation of public order, the protection of life and property, and the detection of crime, shall be eligible for membership, and to receive the benefits provided by the act creating this fund; *provided* such officer has made application for membership in the South Carolina Peace Officers Association, and has paid his duties in said association at the rate of twelve dollars (\$12.00) per year. Street superintendents and their assistants whose duties are to work prisoners and to act as guards, shall be construed as peace officers, and be eligible for membership in the South Carolina Peace Officers Association, and to participate in the benefits provided by the act creating this fund.

Any peace officers employed by the State of South Carolina or any of its political subdivisions at the time of the approval of the act creating the police Insurance and annuity

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fund of the State of South Carolina by the Governor, who have not joined the South Carolina Peace Officers Association on or before the 1st day of July, 1937, when their applications are received, such applications shall be passed on by the board as a whole, and their dues shall begin as of July 1, 1937.

Newly employed peace officers of the State of South Carolina or any of its political subdivisions, to be eligible to receive the benefits provided by the act in creating the police and annuity fund of the State of South Carolina, shall make application for membership in the South Carolina Peace Officers Association within sixty (60) days after the date of their employment, and if their applications be made after the lapse of said sixty (60) days, such applications shall be passed upon by the board as a whole.

8. Membership refunds.

Should a member cease to be a peace officer in the State of South Carolina, he shall resign his membership in this body, and all moneys paid by him into the association will be refunded to him, and all benefits shall cease; *provided, however*, that before he may be reinstated as a member of this association upon re-entering the service as a peace officer, he shall pay back to the association all of the money refunded to him at the time of his resignation. It is further provided that when a member is delinquent in the payment of his dues for a period of sixty (60) days, and has been notified by registered mail of such delinquency, his membership shall become null and void, and all benefits cease. And before his membership shall again become valid he must pay up all back dues from the time of his delinquency to the time of his reinstatement. When a member is suspended for non-payment of dues, and is not subsequently reinstated, all moneys paid in by him become forfeited, and are not returnable to him.

9. Order of business.

The business at all regular meetings of the board shall be transacted in the following order:—

1. Roll call
2. Reading and disposing of the journal
3. Report of the secretary-treasurer
4. Reports of committees
5. Miscellaneous business
6. Approval of claims

The chairman of the board of commissioners may at any time permit a member to introduce a motion, or resolution out of the regular order.

10. Amendment of rules.

A majority of the board of commissioners may, in its discretion, abrogate, repeal, alter, or amend, any of the foregoing rules and regulations at any meeting, regular or special, *provided, however*, that such changes are not contrary to the state law creating this fund.

Public Service Commission, The.

ADOPTED BY THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION.

Common Carriers by Rail and Express Companies.
Practice and Procedure in Proceedings Involving Common Carriers by Rail.
Motor Carriers Safety Regulations.
Motor Vehicles Transporting Persons or Property.
Electric Utilities.
Gas Service.
Telegraph Service.
Telephone Service.
Water Utilities.

Common Carriers by Rail and Express Companies.

Pursuant to § 58-1063, S. C. Code of 1952.

(Filed Secretary of State's office June 30, 1937 unless otherwise noted.)

Rule No. 1. Complaint and answers.

All complaints or petitions to the Commission must plainly and distinctly state the grounds of complaint, the items being numbered and clearly set forth in writing.

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In like manner, all defenses must be distinctly made in writing, and the items correspondingly numbered, as above stated.

These specifications, whether of complaint or of defense, may be accompanied, if the parties so desire, by any explanation or argument, or by any suggestion touching the proper remedy or policy. The parties may also be heard in person, or by attorney, or by written argument, upon such written statements being first filed.

Note: Rules 1 to 4 do not apply to common carriers by rail. See "Practice and Procedure in Proceedings Involving Common Carriers by Rail."

Public utilities appealing from rate decision file bond, see § 58-11.

Rule No. 2. Affidavits required.

When expressly ordered, upon the hearing of any cause that may hereafter come on to be heard before the Commission, the respective parties shall present the testimony of their witnesses by affidavits, in like manner as the same are now by law required to be submitted upon the hearing of applications for injunctions.

Rule No. 3. Copies of affidavits to be furnished opposite side.

All affidavits, intended to be offered by either party, shall be served upon the opposite party, his counsel or agent, having control of his case, at least five days, and all counter-affidavits at least twelve hours, before the day of their hearing. This rule of procedure will be varied only when, in the exercise of a sound discretion, this Commission shall be of the opinion that a departure from this letter thereof may be necessary to the attainment of substantial justice.

Rule No. 4. Public sessions, when held.

The regular sessions of the Commission for the hearing of contested cases will be held at its office in Columbia, S. C., Wednesday of each week at 10 o'clock a. m., unless otherwise ordered by the Commission. When special sessions are held at other places such regulations as may be necessary will be made by the Commission.

Rule No. 5. Suspension of rules.

The Commission reserves the right to suspend or modify, at its discretion, the enforcement of any of its rules, rates, orders or other regulations, where, in its opinion, the conditions are such in any particular instance, that a strict enforcement of such rules or other regulations would result in hardships or injustice.

Rule No. 5 (a). Approval of rates of public utilities.

All rates, tolls, charges and fares proposed to be put into effect by any public utility under the regulation of this Commission, shall be first approved by this Commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law.

This rule refers only to "public utilities" Ry. Co., 194 S. C. 421, 10 S. E. (2d) 465 as defined in § 58-101. *Darby v. Southern* (1940).

Rule No. 5 (b).

No rate, toll, charge, fare nor service of any public utility under the regulation of this Commission shall be deemed approved nor consented to by the mere filing of a schedule or other evidence thereof in the offices of the Commission; but such approval and consent to be good must be actually and affirmatively made.

Rule No. 6. Notice to be posted.

All railroad companies, operating in South Carolina as common carriers, shall be required to have printed in large type and kept posted in a conspicuous place in each waiting room at their depots in South Carolina, the following notice:

NOTICE

All railroad companies are required, under the laws of South Carolina and the rules of the Public Service Commission, to bulletin trains when late, to furnish good, wholesome drinking water to passengers, to keep waiting rooms and passenger coaches clean, well lighted, properly ventilated, and comfortably heated when necessary.

The Public Service Commission of South Carolina would appreciate the prompt reporting to its office at Columbia, S. C., of the failure of any company or its agents to comply with these requirements.

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Rule No. 7. Opening waiting rooms.

At junction points, railroad companies shall be required to open their depot waiting rooms for the accommodation of the traveling public at least thirty minutes before the schedule time for the arrival of all passenger trains, or trains carrying passengers.

At local, or non-junction points, all such waiting rooms shall likewise be opened: *Provided*, That the same shall not be required to be opened, nor kept open, after 10 o'clock p. m., except for delayed trains due before that hour, in which case such rooms shall be kept open until the actual arrival of such delayed trains.

Pursuant to § 58-1178 S. C. Code of 1952.

Rule No. 8. Waiting rooms.

A separate room for white and colored passengers, sufficient for their comfort and convenience, shall be provided at all stations where passenger tickets are offered for sale, and these waiting rooms shall be furnished with adequate lights, and, when the inclemency of the weather requires, with fire, and at all times kept clean and made comfortable for passengers.

A substantial water cooler must be in each waiting room with drinking vessel conveniently placed. The said cooler to be supplied with wholesome water at all hours to meet the requirements of passengers. There shall be connected with each of these waiting rooms whenever practicable, except at flag stations on the railroad lines where there is no regularly kept passenger station, two separate and distinct water closets, one for female passengers and one for male passengers, and said closets shall be kept in fit and suitable condition for use and convenience of said passengers. Such toilets will be considered as connected with the waiting rooms if the walks thereto are walled up on each side and open into or near the waiting rooms so as to afford a reasonable privacy to passengers.

Pursuant to § 58-1178 S. C. Code of 1952.

Rule No. 9. Heating, lighting, etc., of coaches.

On all passenger trains, or trains carrying passengers in this State, the railroad companies shall furnish safe and adequate heating appliances and lights, and shall keep the passenger coaches clean, sufficiently warm, and properly ventilated for the comfort of passengers. All passenger coaches, including closets, after reaching their destination and before being put in service for further use, must be thoroughly cleaned and disinfected.

Rule No. 10. Handling baggage.

All railroad companies shall provide such means or appliances as may be necessary to secure the careful handling of and prevent injury to baggage. At all stations where no proper appliances are supplied, the baggagemaster shall have such assistance from the train hands or others as may be necessary to handle all baggage without injury to same. That at all junctional points and all towns of over 500 inhabitants, sufficient trucks be furnished to both load and unload baggage.

Pursuant to § 58-1184, S. C. Code of 1952.

Rule No. 11. Notice as to delayed trains.

Whenever any passenger train or train carrying passengers on any railroad in this State shall be more than one-half of an hour behind its schedule time, it shall be the duty of said railroad company to bulletin, and keep posted at every telegraph station along its line, in the direction in which said train is going, the time such train is behind its schedule time, and the time of its arrival, as near as can be ascertained.

Each bulletin board upon which the foregoing information is to be posted shall contain the regular schedule of the arrival and departure of all trains carrying passengers.

All notices as to trains behind schedule time shall be erased from the bulletin immediately after the departure of such trains.

Such bulletin shall be changed every quarter-hour until delayed train arrives.

Rules 11 and 12 pursuant to § 58-1175, S. C. Code of 1952.

Rule No. 12. Notice of change in schedules.

Notice of any change in the schedule time of passenger trains, or trains carrying passengers, must be posted conspicuously at each of the stations along the line of the road, and notice to the Commission be given in writing at least eight days before the change is to take effect; said notice to also be published in two issues of newspapers at least

eight days before the change is made: *Provided*, Freight trains carrying passengers and running between local stations may be excepted from this rule by proper showing before this Commission when said train is not advertised in published schedules as carrying passengers.

Notice of change is all that is required.—

Darby v. Southern Ry. Co., 194 S. C. 421,
10 S. E. (2d) 465 (1940).

Rule No. 13. Accidents.

Every railroad corporation shall cause immediate notice of any accident which may occur on its road, attended with injury to any person, to be given to the Public Service Commissioners, by telegraph, telephone or such other means as may be the quickest under the circumstances, at the same time that notice is given the officials of the road on which accident occurred, and shall furnish immediate transportation for the Commissioners over its line to the place of accident free of expense to the Commissioners, and if the Commissioners use another railroad to reach the place of accident, the corporation on whose line the accident occurs shall pay the expense of transportation thereon, and shall also give notice in like manner of any accident falling within any description of accidents of which said Commissioners may by general regulation require notice to be given.

Also, every railroad corporation upon whose line any accident may occur, attended with injury to any person or persons, is, in all such cases, required to immediately notify the most accessible physician or physicians, by quickest possible means, of place of accident and require the giving of such medical or surgical attention as the case or cases may require.

Pursuant to §§ 58-1206 and 58-1207, S. C. Code of 1952.

Rule No. 14. Closing or discontinuing depots, stations and agencies.

(a) Each and every depot, flag stop, station, office and agency, now maintained, conducted or used in South Carolina by any railroad, express or telegraph company doing business in this State, for the transaction of business with the public is hereby formally established and located at the point and on the premises where the same is now being so maintained and conducted. No such depot, flag stop, station, office or agency, as aforesaid, now established, or that hereafter may be established, pursuant to orders made by the Commission, or voluntarily by such company, or otherwise, shall be closed, removed, suspended, discontinued or abolished without authority granted by the Public Service Commission. Said notice to the public shall be posted in a conspicuous place at or near such depot, flag stop, station, office or agency, for not less than thirty (30) days, and a copy of such notice sent to the Public Service Commission. At the expiration of that time, unless protest has been received from the public by the Public Service Commission and the company so notified, then formal application may be made to the Public Service Commission for authority to close, remove, suspend, discontinue or abolish such depot, flag stop, station, office or agency, as the case may be. Should protest be received, the Public Service Commission will notify the company involved, who may, if desired, ask for a formal hearing in the matter, and the Commission will order such hearing if, in its judgment, same is necessary.

14. (b). At hearings relative to application for closing of railroad express and telegraph agencies or offices the agent in charge of such agency or office is required to appear before the Commission at the hearing with such books and records pertaining to the revenues and disbursements of the agency or office in question for such period of time as the Commission may designate.

14. (c). From and after January 1, 1936, no railroad or express company will be allowed to discontinue any agency station and no commercial telegraph company will be allowed to discontinue any telegraph office without a public hearing having been had after all parties concerned have been given due notice.

Rule No. 15. Discrimination.

All of the various kinds of tickets that may be on sale at any and all other offices of a given railroad company, in any given town or city, shall likewise be kept on sale at the depot ticket office of such railroad company in such town or city, at the same prices.

There shall be no unjust discrimination as to passenger rates in favor of or against any individual or locality: *Provided*, however, That this rule shall not be so construed

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as to prevent railroad companies issuing commutation, excursion or mileage tickets as the same are now issued.

Pursuant to § 58-1079, S. C. Code of 1952.

Rule No. 16. Notice as to obstructed trains.

Whenever there is, by reason of accident or otherwise, a break or obstruction on any railroad in this State, which will delay any passenger train on said road, it shall be the duty of said road to have the same bulletined at all stations at and between the said passenger train and the place so obstructed, and the conductor shall give notice of said obstruction to the passengers in the cars, before leaving the station, and the delay that will probably be caused by the same.

Rule No. 17. Cinder deflectors.

Steam railroad companies are required to attach a permanent cinder deflector to windows on all passenger coaches used in this State.

Pursuant to § 58-1182, S. C. Code of 1952.

Rule No. 18. Filing reports and furnishing information.

Each company shall file in the office of the Commission, on or before the last day of each month, a report, duly sworn to, showing fully and in detail the earnings and expenses of such company during the month preceding.

And each of said companies shall, on or before the first day of March of each year file in the office of the Commission an annual report, duly sworn to, showing fully and in detail the operations of such company during the preceding fiscal year, to-wit: from January the first to December the thirty-first, both inclusive.

All of said reports shall be rendered on, and in accordance with, the printed forms that the Commission will prescribe and furnish for that purpose.

In addition to the foregoing, each of said companies shall furnish such other reports and information as the Commission may require from time to time.

Furthermore, it shall be the duty of each of said companies to produce, for the inspection of the Commission, any and all books, papers, contracts, agreements and other original records, of any character, whatsoever, that may be in possession of said company, or within its power, custody or control, or copies thereof, as may be demanded and designated by the Commission.

Rule No. 19. Stopping passenger trains at stations.

All passenger trains operated in this State shall, at all stations where such trains stop, either upon flag or regular schedule, be brought to a standstill with such relation to the waiting-rooms of the station building, or other passenger facilities at said station, as will render egress from and ingress to said trains most practicable and convenient for the passengers, without reference to the convenient handling of baggage or other freight.

Pursuant to § 58-1177, S. C. Code of 1952.

Rule No. 20. Conductors on pullman, dining cars, etc.

No sleeping car, chair car, parlor car, dining car, or buffet car shall be operated on any line of railroad in South Carolina, when occupied by regular passengers holding proper transportation for the occupancy of such cars, unless such cars are continuously in charge of an employee or an authorized agent of the firm or corporation owning or operating same, having the rank and position of conductor.

Pursuant to § 58-1151, S. C. Code of 1952.

Rule No. 21. Rates applicable to roads under one management or control.

All connecting railroads, doing business in this State, and under the management or control, by lease, ownership, association or otherwise, of one and the same person, firm, corporation or association, shall, for purposes of transportation, in applying freight and passenger tariffs, be considered as constituting but one and the same road, and the rate shall be computed as upon parts of one and the same road, unless otherwise specified by the Public Service Commission.

Pursuant to § 58-1141, S. C. Code of 1952.

Rule No. 22. Local shipments.

All shipments moving locally by rail, between points in South Carolina are subject to rates, rules and regulations as adopted by the Public Service Commission of South

Carolina, unless there is issued at the time of shipment at the place the shipment originates, or at the nearest agency station thereto, through interstate bill of lading to the final point of destination of the shipment, or such a bill of lading as may be exchanged for ship's bill of lading at a place of export.

Rule No. 23. Joint rates defined, manner of making combination rates.

Joint freight rates are those ordered put in, or authorized, by the Public Service Commission of South Carolina, which rates shall only apply on shipments moving between two points in the State of South Carolina, over two or more railroad routes, not under the same management or control.

(b) In making combination rates between points in South Carolina where no joint rates are in effect, no railroad shall charge more than its maximum rates, less twenty per cent., except that in no case shall the total rate so made be less than the maximum mileage rate for the total short line distance.

(c) In making combination rates, where one or more of the factors are specific point to point or mileage rates lower than the maximum rates prescribed by the Commission and the other factor or factors is the maximum mileage rate, the factor or factors which is the maximum mileage rate is subject to a deduction of twenty per cent except that the total rate so made must not be less than the maximum mileage rate for the total short line distance. Where one or more of the factors are specific point to point rates, or mileage rates voluntarily established by the railroads lower than the maximum rates or scales, such rates will not be subject to a deduction of twenty per cent.

(d) "The maximum mileage rates" are the mileage rates (or scales) prescribed by the Public Service Commission of South Carolina.

(e) Fractions resulting in the deduction from the maximum mileage rate, as required by this rule, shall be disposed of in accordance with the provision of Rule No. 16 exceptions No. 8, Note 53, before combining the factors which constitute the through rate.

Rule No. 24. Rates between competitive points.

Where there are two or more railroad lines between any two points in South Carolina, having through connections, the lowest freight rate established between such points shall be charged by the other lines accepting the freight for transportation between said points.

Rule No. 25. Distances for changing rates.

Ten miles has been fixed as the usual limit for a change of freight rates in South Carolina, but the railroads may, if they so desire for intermediate distances, adopt rates also intermediate between those given in the tables.

When the distance between stations ends in a fraction of a mile, such fraction, if .5 or over, will be counted as a mile. If less than .5, such fraction will not be considered.

Stations not over two miles beyond the upper limits of ten-mile group may be included in such group. The Commission reserves the right, however, to correct the charge in extreme cases which work hardships, although the same may not violate the letter of its rules.

Rule No. 26. No change of rates without approval of the Commission.

The rates fixed or authorized by this Commission are to be regarded as maximum rates, which the railroads shall not exceed, except when specifically authorized by rule or written consent of this Commission. The railroads may adopt lower rates with the consent of the Commission, but if they do so for one shipper or person, they must, for like service, apply the same reduction of rates for all other persons and if they fix less freight rates from one station, they shall make a corresponding reduction of the same per cent, at all stations along the line of road, so as not to discriminate against any person or locality except as provided in Rule 25.

Rule No. 27. No discrimination allowed.

There shall be no discrimination by any railroad company chartered by this State in favor of or against any railroad company with which it may connect, but each road shall deal with all its connections at any one point on the same terms, and shall afford the like customary facilities for the interchange of freight between all of its connections at the same point, any contract, combination, joint ownership or management to the contrary notwithstanding.

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Rule No. 28. No rebate permitted.

No rebate, bonus, drawback or other advantage in any form shall be allowed, directly or indirectly, upon shipments made or service rendered to any person, but the rates shall be the same to all.

Rule No. 29. Routing shipments.

The right of the shipper to direct by what road or roads in this State his shipments shall be transported must be observed by the carriers.

Whenever a shipper tenders to any railroad, express or other transportation company, a shipment for transportation between points within this State, and give such company routing instructions, it shall be the duty of said company to receive such shipment and forward according to instructions given. And if it be necessary in complying with such routing instructions for the shipment to pass over the lines of two or more companies it shall be the duty of the initial company to so deliver to its connection, and each succeeding company shall do likewise, as will cause compliance with routing instructions, and the lowest rate applicable via such specified route shall be applied.

Where shipments are tendered without routing instructions, the company receiving same in the first instance shall forward said shipment, with due regard to the interests of the shippers and by that reasonable and practicable route over which the lowest charge for transportation applies, and any damage resulting to a shipper from a disregard of this obligation by any company shall be repaired by the company responsible for the misrouting making reparation to shipper to the extent of the difference between the necessary expense incurred in making delivery of shipment over the route by which same improperly moved and the necessary expense which would have been incurred had shipment been properly routed; *Provided*, That any reparation made upon this account shall in no wise affect the right of shipper to any claim for actual damages sustained in excess of the difference in expense incurred in making delivery as herein provided.

No railroad shall decline or refuse to transport any article proper for transportation.

Investigate interstate rates, see § 58-2.

Rule No. 30. Notice to be given before change of rates.

Before any rate shall be fixed, established or changed by the Public Service Commission, the railroad company to be affected thereby shall have at least twenty (20) days' notice of the time and place when and where the matter of fixing or changing such rate will be considered by the Commission in session; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done.

Rule No. 31. When rates are effective.

All authorities for rates issued by the Commission may be made effective at once, or as soon after date of issuance as possible, but in no case later than thirty (30) days after the date of the Commission's authority, unless otherwise specified.

Rule No. 32. Conflict between rates.

Whenever there is a conflict between class and commodity rates, or between mileage rates and commodity rates, for the transportation of freight, between any two points in South Carolina the lowest rate in effect shall be charged.

Rule No. 33. Delays in transportation.

No railroad shall, for any cause, subject any article of freight to unreasonable delay in receiving, delivering or forwarding the same.

Pursuant to §§ 58-1151, 58-1162, S. C. Code of 1952.

Rule No. 34. Keeping open depots.

All freight depots must be kept open each day, except Sundays and legal holidays, during following hours: 8:00 o'clock a. m. to 5:00 o'clock p. m., for delivering freight, and 8:00 o'clock a. m. to 4:00 p. m. for receipt of less than carload freight for forwarding. The closing hour on Saturdays may be 2:00 o'clock p. m. for delivering and 1:00 o'clock p. m. for receiving. [Suspended by orders of Public Service Commission from July 27, 1949 to further order of the Commission.] (Filed Secretary of State's office July 27, 1949 and August 14, 1950.)

Rule No. 35. Articles not classified.

Rates for the transportation of any article not included in the Freight Classification may be assessed as if upon the article most analogous to it in said classification.

Rule No. 36. Repairs and improvements.

Whenever in the judgment of the Public Service Commissioners it shall appear that repairs are necessary upon any railroad in this State, or that any addition to the rolling stock, or that any enlargement of, or improvement in, the stations or station houses, or any changes in the mode of operating the road and conducting its business, is reasonable and expedient, in order to promote the security, convenience and accommodation of the public, they shall give information in writing to the railroad company of the improvements and changes which they adjudge to be proper, and if said company shall fail, within sixty (60) days, to adopt the suggestion of said Commissioners, they will take such legal proceedings, as they may deem expedient.

Rule No. 37. Adjusting overcharges.

Railroad companies shall adjust all freight charges promptly when shipments are delivered, and apply only the legal, published rates and classifications in effect at time shipment moved from point of origin.

Actual weights must be observed in settling charges, unless otherwise provided for in classification.

If, after settlement is made, an overcharge appears, the railroad company collecting such overcharges shall make proper refund to shipper or consignee when demand is made and said overcharge is shown.

Rule No. 38. Rates for less than carloads not to exceed carload rates.

The charge for a less than carload shipment must not exceed the minimum charge for a minimum carload of the same freight at the same rating; provided the loading is done by the consignor and the unloading by the consignee; the charge for a car fully loaded must not exceed the charge for the same lot of freight being taken as a less than carload shipment.

Rule No. 39. Carload minimum.

Unless otherwise specified in South Carolina Exception sheet, the minimum carload weight for all articles specified therein, shall be 20,000 lbs. and this shall be the minimum—regardless of length of the car used.

Carload minimum weight for all carload shipments except where included in South Carolina Exception sheet, subject to specified minimum weight, shall be the minimum weight specifically named in Southern Classification, or South Carolina Exception sheet, supplements thereto and reissues thereof. Such carload minimum weights will not be increased because a car over 36 feet in length is furnished.

Rule No. 40. Railroads required to furnish information.

Every railroad corporation operating in this State shall at all times, on request, furnish the Public Service Commissioners any information required by them concerning the condition, management and operation of its railroads.

Pursuant to § 58-1044, S. C. Code of 1952.

Rule No. 41. Carload and ton defined.

A carload shipment is a consignment of at least the specified minimum carload weight of one class of freight, at one time, by one consignor, from one point of consignment to one consignee, at one point of delivery.

A ton is 2,000 pounds unless otherwise provided.

Rule No. 42. Assessing rates where not otherwise provided for.

Between points where rates are not provided for, the Commission will, on application of shipper, consignee, or railroad interested, make reasonable rates for immediate use, or to correct charges previously assessed for which no rates are published.

Rule No. 43. Posting of rates.

Railroads in this State are required to keep "posted" in all their stations copies of rate schedules with tables showing distances between all stations, applying on their respective roads. It shall be the duty of all such railroads to obtain as needed, from the Public Service Commission, all such schedule of rates, including such changes or revisions as may from time to time be made, and to "post" copies of same as required by law.

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Rule No. 44. Regulating charges for shorter distances.

The railroads will not be required to regulate their charges for shorter distances by their proportion of through rates between terminal or junctional competitive points.

Pursuant to § 58-1081, S. C. Code of 1952.

Rule No. 45. Erecting depots.

All railroads in this State are required to erect within the time specified by the Commission union or other depots at such points as the travel and public interest shall in the judgment of the Commission justify.

Pursuant to § 58-1179, S. C. Code of 1952.

Rule No. 46. Time tables.

All railroads in South Carolina shall furnish the Public Service Commission complete time tables covering schedules of all regular trains carrying passengers over their respective roads; and shall furnish new time tables or schedules, whenever changes are made, as soon as such schedules are received from the printer.

Rule No. 47. Weighing carload shipments.

Any consignee of coal or other articles to be delivered to him in carload lots by any common carrier at any point within the limits of this State where such common carrier maintains track scales or track scales are accessible, shall have the right to demand that such coal or other articles be reweighed before delivered to him by said common carrier, within forty-eight (48) hours after such demand to reweigh the same, and to deliver to such consignee a written or printed or partly written and partly printed statement, showing the true weight thereon, and that where track scales are accessible and whenever practicable, all railroad companies operating in South Carolina are required to weigh all loaded tank cars for shipment of oil on track scales at the station of the initial line, or at the oil mill where such cars are to be loaded and to weigh these cars on same scales when loaded, and issue Bill of Lading therefor with actual weight of the contents of each car inserted thereon. And that weight of cars may be accurately determined, each car shall be weighed separately and uncoupled at each end from other cars upon the request of consignee.

Pursuant to §§ 58-1111, 58-1115, S. C. Code of 1952.

Rule No. 48. Handling freight at non-agency stations.

At all non-agency stations the railroads shall load and unload all less than carload shipments. The consignor or consignee shall load or unload all carload shipments. When a shipper at a non-agency station desires to make a carload shipment the order for empty car shall be placed with the conductor or the agent of the railroad at the nearest station, and said car shall be set off on the siding designated, loaded by the shipper and bill of lading issued by the nearest agent of the railroad in the direction the car moves. When a carload shipment is consigned to a non-agency station, the freight charges on which are prepaid, the car shall be set off at that point and unloaded by the consignee. Railroads shall not leave less than carload freight at non-agency station when there is no one there to receive it if the weather is such as to cause damage, but the same shall be carried to the nearest station for protection and return at the proper time.

Rule No. 49. Handling freight cars on first class passenger trains.

No railroad operating trains in South Carolina shall be allowed to handle any freight cars, loaded or empty, on a train that is operated as a first class passenger train, or shown as such in the published time tables of any railroad except by written permission of the Public Service Commission.

Rule No. 50. Grain-cleaning in transit.

The rate on all movement of grains in South Carolina where grain in transit is stopped at intermediate points for cleaning and grading purposes shall be the present through rate from point of origin to destination, plus 20 per cent for each and every intermediate stop where cleaning and grading is to be done.

Shrinkage on all reshipments from cleaning points will be allowed.

The above rate is intended for an emergency rate.

Grain delivered at local markets for cleaning purposes cannot be substituted for grain in transit which is held at that point for cleaning.

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Rule No. 51. Milling-in-transit rules.

Section 1. Wheat or corn may be shipped from railway stations in South Carolina.

Section 2. To milling points located on the railroads in South Carolina and milled and the product reshipped to stations in South Carolina under the following rules, viz.:

Section 3. Shipments of wheat or corn to be milled in transit must be filled to the milling point at full tariff rates.

Section 4. Original bills of lading and expense bills for wheat or corn (the product of which is to be reshipped), must be surrendered to the railroad's agent at milling point.

Section 5. These bills of lading and expense bills must be cancelled so as to prevent their use a second time.

Section 6. The agent at milling point must keep a ledger account with the mill, which should show the receipts of wheat or corn, and the shipments of each kind of milled product made thereunder.

Section 7. Waybills for the product from milling points must show the original point of shipment of the wheat or corn from which it is milled and the number and date of the waybill upon which it is received at the mill.

Section 8. When the conditions of these rules have been fully complied with the agent at the milling point is authorized to waybill shipments of milled products at the difference between the rate on the wheat or corn into the mill and the rate on the milled product for a distance equal to the sum of the distance from point of origin of the grain (from which milled), to the milling point, plus the distance from the milling point to destination of the milled product, as provided for in local tariff of all railroads.

For example, the agent at Rock Hill, S. C., has a shipment of flour in sacks milled from wheat received from a point 75 miles distant from Rock Hill, to be reshipped to a point 50 miles from Rock Hill. In this instance the total haul is 125 miles. The rate on the wheat into the mill is 19 cents, the rate on the flour in sacks (Class C) for a distance of 125 miles is 27 cents. Shipments should be waybilled from Rock Hill to destination at the difference between the rate on the grain into the mill and the rate on flour in sacks for the combined distance, or 125 miles which is 8 cents per hundred pounds.

Rule No. 52. General rule.

All rules and regulations herein prescribed as applying to railroads are to be regarded as applying, with equal force and effect, to express companies doing business in this State: *provided*, such application is practicable and does not conflict with the laws of this State or of the United States, nor with the rules and regulations herein distinctly prescribed for the government of express companies.

Rule No. 53. Posting schedules.

All express companies in South Carolina are required to file with the Commission, to print and keep posted at each of their offices in this State, schedules of rates, classification and charges for the carrying of freight, which shall be opened during office hours to public inspection.

Rule No. 54. Changes in rates and classification.

No change in express rates or classification shall be made until thirty (30) days' notice of such change has been filed or posted at all express offices or agencies in this State, and not until thirty (30) days' notice has been given the Commission, and not until the consent of the Commission has been obtained.

Rule No. 55. Accidents.

All express companies in South Carolina are required to comply with Section 4923 of the General Statutes of South Carolina, "Accidents, Notice to be given," and Rule No. 14 of the Public Service Commission, "Accidents."

Practice and Procedure in Proceedings Involving Common Carriers by Rail.

Pursuant to §§ 58-1031 and 58-1063, S. C. Code of 1952.

Rule No. 1. Public sessions and hearing.

Public sessions of the Commission for the hearing of evidence or oral arguments, or for public conferences and hearings, will be held as set upon notice by the Commission, subject to change upon such notice as may be practicable.

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Parties

Rule No. 2. Classes. Who may appear. Ethical standards.

The parties to proceedings before the Commission are complainants, defendants, interveners, respondents and applicants, according to the nature of the proceedings and their relation thereto. Any party may appear and be heard in person or by agent or attorney. All persons appearing in such proceedings must conform to the standards of ethical conduct required of practitioners before the courts of the State. Failure to conform to those standards will be ground for declining to permit appearance as attorney in any proceeding before the Commission.

Rule No. 3. Complainants and defendants, joinder.

In complaint cases the parties who complain to the Commission of anything done or omitted to be done in alleged violation of the law or rules of the Commission are styled complainants. The common carriers so complained of, and their receivers or operating trustees, if any, are styled defendants. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants, and involve substantially the same alleged violation of the law or rules, and a like state of facts.

Rule No. 4. Necessary defendants, through transportation.

If complaint is made in respect of through transportation by continuous carriage or shipment, all carriers subject to the jurisdiction of the Commission participating therein should be made defendants.

Rule No. 5. Joint defendants when several carriers involved.

If complaint is made of classification, rates, fares, charges, regulations or practices of more than one carrier, all carriers against which an order is sought should be made defendants.

Rule No. 6. Respondents.

In proceedings or investigations made by the Commission on its own motion in "show cause" orders, etc., carriers against whom such order is directed are styled respondents.

Rule No. 7. Carriers as applicants.

In applications for relief from any rule or ruling of the Commission or in disputes between carriers as to divisional arrangements, the carriers by whom, or on whose behalf the application is made are styled applicants.

Rule No. 8. Interveners. Petitioners. Intervener becomes party.

Petitioners permitted to intervene as hereinafter provided for are styled interveners. Any one entitled to complain to the Commission, may petition for leave to intervene in any pending proceeding, prior to, or at the time it is called for hearing, but not after except for good cause shown. The petition must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, should conform to the requirements for a formal complaint. When the petition is filed prior, or subsequent to the hearing the petitioner must furnish therewith a sufficient number of copies for service upon all parties to the proceeding, and eight additional copies for use of the Commission. Leave to intervene will not be granted except on allegations reasonably pertinent to the issues already presented, and which do not unduly broaden them. When petitions of intervention are not filed prior to, but tendered at the hearing sufficient copies must be provided for distribution as motion papers to the parties represented at the hearing. If leave be granted at the hearing eight additional copies must be furnished for the use of the Commission. Appearances may be entered in general investigations instituted by the Commission without applying for, or receiving leave to intervene. Those entering appearances thereby become parties to such proceedings.

Complaints

Rule No. 9. Complaints either formal or informal.

Complaint may be either formal or informal.

Rule No. 10. Informal complaints.

Informal complaints may be made by letter or other writing and as received are filed. Matters thus presented are, if their nature warrants it, taken up by correspondence with

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the carriers affected in an endeavor to bring about satisfaction of the complaint without formal hearing, and are given serial numbers on the informal docket. This informal procedure has been found efficacious in the great majority of cases and is recommended.

Rule No. 11. Substance of informal complaints.

No form of informal complaint is prescribed, but in substance the letter or other writing should contain the essential elements of a complaint including name and address of complaints the names of the carrier or carriers against which complaint is made, a statement that the statutes or rules of the Commission have been violated by the carrier or carriers named, indicating when, where and how, and a request for affirmative relief. It is desirable that the informal complaint be accompanied by copies in sufficient number to enable the Commission to transmit one to each carrier named, and it may be accompanied by supporting papers. Proceedings thus instituted on the informal docket are without prejudice to complainant's right to file and prosecute a formal complaint, whereupon the proceedings on the informal docket will be discontinued.

Rule No. 12. Formal complaints, number of copies. Service.

Formal complaints must conform to the requirements of Rule 33. The names of all parties complainant and defendant must be stated in full without abbreviation, and the address of each complainant, with the name and address of his attorney, if any, must appear. Each formal complaint must be accompanied by copies in sufficient number to enable the Commission to serve one upon each defendant and retain eight for its own use. The Commission will serve the complaint upon each defendant with notice to defendants setting forth the date on which answer must be made to the complaint, such notice will also set the date for formal hearing of the complaint which will be not less than thirty-five (35) days after the date on which complaint is mailed by the Commission provided the answer of the defendants does not satisfy the formal complaint.

Rule No. 13. Statement of issues.

Complaints should be so drawn as fully and completely to advise the parties defendant and the Commission wherein the law or rules of the Commission have been alleged to be violated by the acts or omissions complained of, or will be violated by a continuance of such acts or omissions, and should set forth briefly and in plain language the facts claimed to constitute such violation and the relief sought. Two or more grounds of complaint involving the same principal subject, or state of facts may be included in one complaint, should be separately stated and numbered. The several rates, fares, charges, practices, classification and regulations complained of should be set out by specific reference to the tariffs in which they appear whenever that is practicable. For example, if it is proposed to seek any particular rate(s), basis or rates, rule, etc., when complaint is heard, it should be drawn so as to acquaint defendants with the exact rate(s), basis or rates, rule, etc., to be sought at the hearing.

Rule No. 14. Supplemental complaints.

Supplemental complaints may be tendered for filing by the parties complainant against the parties defendant in the original complaint, setting forth any causes of action alleged to have accrued in favor of the complainants and against the defendants since the filing of the original complaint, and upon leave granted will be filed and served by the Commission as provided for original complaints, heard, considered and disposed of therewith in the same proceeding, if practicable.

Answers

Rule No. 15. Form and style. Time of filing.

Answers must conform to the requirements of Rule No. 33. Answers to formal complaints must be filed with the Commission within twenty (20) days after the day on which the complaint was served. This period may be extended by the Commission when it deems advisable. The answer must, in the same period be served as provided in Rule No. 19. Any defendant failing to file and serve answer within said period will be deemed in default, and issue as to such defendant will thereby be joined.

Rule No. 16. Answers to petitions in interventions, or amended complaints.

Answers to petitions in intervention or amended complaints filed and served upon leave granted need not be separately made unless the defendants so elect, and their answers to the formal complaint will be deemed answers to the petition in intervention.

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Rule No. 17. Answers to be full and complete.

All answers should be so drawn as fully and completely to advise the parties and the Commission of the nature of the defense, and should admit or deny specifically and in detail each material allegation of the pleading answered.

Rule No. 18. Statements as to satisfaction of complaints.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed, setting forth when and how the complaint has been satisfied.

Service

Rule No. 19. Service of complaints. Number of copies.

Formal complaints, and upon leave granted, petitions in intervention, supplemental complaints, and amended complaints will be served by the Commission and copies of each must be furnished in sufficient number as provided in Rule 12 in respect of complaints.

Rule No. 20. Service upon attorneys.

When any party has appeared by attorney or agent, service upon such attorney or agent will be deemed service upon the party.

Rule No. 21. Amendments.

Amendments to any pleading will be allowed or refused by the Commission in its discretion.

Rule No. 22. Continuance and extensions of time.

For cause shown, continuance and extension of time will be granted or denied by the Commission in its discretion.

Rule No. 23. Stipulation.

The parties may, by stipulation in writing filed with the Commission, or presented at the hearing, agree upon any facts involved in the proceedings. It is desired that the facts be thus agreed upon insofar as, and whenever practicable.

Hearings

Rule No. 24. Assignments for hearing. Examination of witnesses.

When issue is joined upon formal complaint the complainant shall open and close. At hearings upon applications when carriers are applicants (Rule 7), applicant shall open and close. The order of presentation above prescribed for the several kinds of hearings, respectively, shall be followed, except as the Commission may prescribe a different order or the Commission may otherwise direct. Interveners shall follow the party in whose behalf the intervention is made, and in all cases where the intervention is not in support of either original party the Commission shall designate at what stage such interveners shall be heard.

Rule No. 25. Order of procedure. Various proceedings.

At hearings on formal complaint the complainant shall open and close. At hearings upon applications when carriers are applicants (Rule 7), applicant shall open and close. The order of presentation above prescribed for the several kinds of hearings, respectively, shall be followed, except as the Commission may prescribe a different order or the Commission may otherwise direct. Interveners shall follow the party in whose behalf the intervention is made, and in all cases where the intervention is not in support of either original party the Commission shall designate at what stage such interveners shall be heard.

Rule No. 26. Depositions.

The testimony of any witness may be taken by deposition, at the instance of a party, in any proceeding or investigation before the Commission after the same is at issue by the filing of the answer. Such depositions must be after notice given in writing by the party or his attorney of record. No deposition shall be taken except after six days' notice to the parties, and must conform to the statutory provisions of South Carolina and be taken before the proper officer as provided by statute.

Rule No. 27. Witnesses.

The Commission in making any examination for the purpose of obtaining information in proceedings coming up for hearing shall have power to issue subpoena for the attendance of witnesses by such rules as may be prescribed in accordance with Section 58-1048 of the Code of 1952.

Documentary Evidence

Rule No. 28. (a) Relevant matter in same document with irrelevant. Where relevant and material matter offered in evidence by any party is embraced in book, paper or document containing other matter not material or relevant, the party must plainly designate the matter so offered. If the other matter is in such volume as would necessarily cumber the record, such book, paper or document will not be received in evidence, but may be marked for identification and if properly authenticated, the relevant and material matter may be read into the record, or if the Commission so directs a true copy of such matter in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper or document, and to offer in evidence in like manner other portions thereof if found to be relevant.

(b) Commissions files, except tariffs—records in other proceedings. In case any matter contained in a report or other document, not a tariff schedule, on file with the Commission is offered in evidence such report or other document need not be produced or marked for identification, but in other respects the provisions of the foregoing subdivisions (a) of this rule will apply. In case any portion of the record before the Commission in any proceeding other than the one on hearing is offered in evidence a true copy of such portion shall be presented for the record in the form of an exhibit, unless:

(1) The portion is specified with particularity in such manner as to be readily identified, and

(2) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any other portion offered by any other party may be incorporated by like reference, subject to (1) and (2), and

(3) The Commission directs such incorporation. Any portion so offered, whether in the form of an exhibit or by reference, shall be subject to appropriate objection.

(c) Copies of exhibits to opponent. When exhibits of a documentary character are to be offered in evidence copies must be furnished to opposing counsel, unless the Commission otherwise directs.

(d) Filing subsequent to hearing. Where agreed upon by the parties at or after the hearing, the Commission, if it deems advisable, may receive specific documentary evidence as part of the record within a time to be fixed, but which shall expire not less than ten (10) days before the date fixed for filing and serving briefs.

(e) Documents not received after hearing. Except as above provided or as may be expressly permitted in particular instances, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration with the proceedings after the close of the testimony and will return same to the sender.

(f) Copies for commission. Unless otherwise directed eight copies of each exhibit of a documentary character must be furnished for the use of the Commission.

Rule No. 29. Briefs and oral argument.

(a) Briefs must comply with the requirements of Rule 33. The date of each brief must appear on its front cover or title page. Each brief should contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record or exhibit where the evidence appears. It should include requests for such specific findings as the party thinks the Commission should make.

(b) Filing and service. Copies for commission: Application for extension. Briefs not filed with the Commission and served on or before the dates fixed therefor will not be received except by special permission of the Commission. All briefs must be accompanied by notice showing service upon all other parties or their attorneys who appeared at the hearing or on brief, and eight (8) copies of each brief shall be furnished for the use of the Commission. Application for extension for time in which to file briefs shall be by petition in writing stating the facts on which such application rests, which must be filed with the Commission at least four days before the time fixed for filing such briefs.

(c) Procedure in proposed report cases. For application in "proposed report" cases which are all cases on the formal docket except those specified in Rule 30, paragraph (d) the following procedure will govern:

1. If oral argument before the Commission is desired the party desiring such argument shall notify the Commission at, or before the hearing, so they may arrange to hear the argument at the close of the testimony. Such argument will be transcribed and bound

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with the transcript of testimony, and will be available for consideration in deciding the case.

2. Only one initial brief shall be filed by each party. The Commission shall fix for all parties the same time within which to file their briefs. Reply briefs are not permitted at this stage.

3. After expiration of the time set for briefs a proposed report containing a statement of the issue and facts and the findings and conclusions therein will be served by mailing copies to the parties or attorneys who appeared at the hearings or upon brief, except that in general investigation copies may also be mailed in the Commission's discretion to other parties whose appearances are noted of record.

4. Within twenty days after service of the proposed report any party may file and serve in the manner prescribed for briefs, exceptions to the proposed report and brief in support of the exception. Exceptions and briefs should be contained in one brief or document. Within ten days after expiration of the time so fixed briefs in reply to the exception briefs may be filed and served, but will not be received later except under leave granted upon application therefor. Application for oral argument before the Commission may be made by any party filing exceptions, or reply to exceptions, and must accompany the exceptions or reply.

5. Exceptions to the proposed report either as to statements of facts or matters of law must be specified. If exception is taken to matters of law or conclusions, the points relied upon must be stated separately and clearly. If exception is taken to any statement of fact reference must be made to the pages or parts of the record relied upon, and a corrected statement incorporated in the exception brief.

6. In the absence of exceptions that are sustained, or of ascertained error the statement of the issue and of the facts in the proposed report will ordinarily be taken by the Commission as the basis of its final decision.

Rule No. 30. Procedure in "ordinary" or "no proposed report" cases.

(d) In cases of this nature which are on the formal docket such as petitions for revision of rates from carriers, or petitions requesting formal authority of the Commission for adoption of proposed rules or regulations, new rates, schedules, involving increases or reductions, ordinary complaints from shippers which from their nature may be disposed of after proper hearing before the Commission without the service of a proposed report or the filing of briefs by either party to such hearing, the hearing will be had in the usual manner set forth for hearing formal complaints, and at the close of the taking of testimony the Commission will proceed to dispose of the case by a formal order served on each party or parties and all others interested or affected by such order.

(e) Procedure when change in southern classification is desired to be made by carriers. Before change in the Southern Classification may be made applicable to South Carolina intrastate traffic, there shall be filed with the South Carolina *Public Service Commission*, application of the Southern Classification Committee accompanied by fifteen copies of printed supplement or other forms, setting forth such proposed changes and requesting the approval of same:

Further, that the Commission shall cause copies of issues setting forth the proposed changes to be furnished independent traffic manager, Chambers of Commerce, and others who may be interested in such proposed changes, and unless objections are filed within twenty (20) days after such notice, the Commission will proceed to formally approve same. In case objections are expressed, no such changes will be made pending formal hearing and approval by the Commission.

Rule No. 31. Application for rehearing, rearguments, or modification of orders.

(a) Application for further hearing in proceedings before final submission, for reopening a proceeding after final submission, or for rehearing or reargument after decision, must be made by petition within twenty (20) days, stating specifically the grounds relied upon, eight copies to be filed with the Commission and one copy served by the petitioner upon all parties or attorneys who appeared at the hearing or oral argument, if had, or on brief.

(b) Further hearing. If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence, the nature and purpose of the evidence to be adduced must be briefly stated and it must not appear to be merely cumulative.

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(c) Rehearing or reargument. If the application be for rehearing or reargument, the matter claimed to have been erroneously decided must be specified and the alleged errors briefly stated. If thereby any order of the Commission is sought to be vacated, reversed or modified by reason of matters which have arisen since the hearing or of consequence which would result from compliance therewith the matters relied upon by the petitioner must be fully set forth in the petition.

(d) Modification of order. Applications for modification of orders which seek only a change in a date when they shall take effect or in the period of notice thereby prescribed must be made by petition seasonably filed and served in like manner as other applications under this rule except that in cases of emergency such relief may be sought informally by telegram or otherwise upon notice thereof to all parties or attorneys who appeared as aforesaid.

Rule No. 32. Transcript of testimony.

Transcript of testimony will be furnished to those requesting it at the close of the hearing, by the official reporter of the Commission at such price as may be designated by the Commission, and it is requested that complainants and defendants notify the official reporter in writing, if they desire a copy and designate to whom it shall be sent when transcribed.

Rule No. 33. Specifications as to complaints, answers, petitions, applications, briefs, etc.

(a) In all cases, exhibits or documentary evidence to be filed must be typewritten or printed. If typewritten they should be on paper not more than 8½ inches wide or 12 inches long, the impression must be on only one side of the paper, and must be double spaced except that long quotations should be single spaced and indented. Mimeographed, multigraphed, or planographed copies will be accepted as typewritten.

(b) Briefs. Briefs may be either printed or typewritten.

(c) Signature. Complaints, answers, motions, petitions, applications and notices must be signed in ink by the party, petitioner or applicant, or by his or its duly authorized attorney, and must show the office and post office address of the signer.

Rule No. 34. Computation of time. Sundays and holidays.

When the time prescribed in these rules for doing any act expires on Sunday or legal holiday, such time shall extend to, and include the next succeeding day that is not a Sunday or legal holiday.

Rule No. 35. Office and address of the commission.

The offices of the Commission are on the first floor of the State Office Bldg., Columbia, S. C., and will be open for the transaction of business on week days from 9 A. M., until 5 P. M. except on Saturday the office will close at 1 P. M. All the offices will be closed on Sundays and legal holidays.

Note: These rules of practice and procedure automatically cancel Commissions general Rules 1, 2, 3 and 4 insofar as such rules involve proceedings in connection with common carriers by rail.

MOTOR CARRIER SAFETY REGULATIONS

Pursuant to § 58-1461, S. C. Code of 1952.

(Filed Secretary of State's office December 31, 1940.)

General definitions—

0.01 The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used upon the highways for compensation in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails.

0.02 The term "vehicle" means any conveyance of any type whatsoever operated upon the highways.

0.03 The term "bus" means any motor vehicle designed or adapted and used for the transportation of passengers, including taxicabs.

0.04 The term "truck" means any motor vehicle, other than a semi-trailer, full trailer, or pole trailer, self-propelled and designed or adapted and used exclusively for the transportation of property.

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0.05 The term "tractor" means any motor vehicle designed and used primarily for drawing other vehicles and so constructed as to carry a part of the weight of the vehicle and load so drawn.

0.06 The term "semitrailer" means any motor vehicle, other than a "pole trailer" or a motor vehicle transported in drive-away operations by means of a "saddle-mount", with or without motive power and designed to be drawn by another motor vehicle and so constructed that some part of its weight and that of its load rests upon the towing vehicle.

0.07 The term "full trailer" means any motor vehicle, including any semitrailer equipped with a "dolly" (auxiliary front axle), other than a "pole trailer" or a motor vehicle transported in drive-away operations by means of a tow-bar, with or without motive power, designed to be drawn by another motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

0.08 The term "pole trailer" means any vehicle without motive power, possibly of variable wheel base, designed to be drawn by another vehicle and attached to the towing vehicle by means of a "reach", or "pole", or by being "boomed" or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly-shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

0.09 The term "drive-away operation" means any operation in which a single motor vehicle or combination of motor vehicles, new or used, constitutes the commodity being transported and in which the motive power of any such motor vehicles is utilized.

0.10 The term "gross weight" means the combined weight of the motor vehicle and any load thereon.

0.11 The term "driver" means any individual who drives in transportation any motor vehicle as defined in Rule 0.01 above.

0.12 The term "business district" means the territory contiguous to and including a highway when 50 per cent or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business.

0.13 The term "residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences, or residences and buildings in use for business.

0.14 Any other term used in these regulations is used in its commonly accepted meaning, except where such other term has been defined elsewhere herein or in the Motor Vehicle Carriers Law in which event the definition therein given shall apply.

PART 1

QUALIFICATIONS OF DRIVERS

1.1 Compliance required.

Every motor carrier shall comply with the following regulations, and shall instruct his or its employees and agents concerned with the transportation of persons or property by motor vehicle with respect thereto.

1.2 Minimum requirements.

No motor carrier shall drive, or require or permit any person to drive, any motor vehicle for compensation unless the person so driving possesses the following minimum qualifications:

1.21 Mental and physical condition:

- (a) No loss of foot, leg, hand or arm.
- (b) No mental, nervous, organic, or functional disease, likely to interfere with safe driving.
- (c) No loss of fingers, impairment of use of foot, leg, fingers, hand or arm, or other structural defect or limitation, likely to interfere with safe driving.

1.22 Eyesight.

Visual acuity (either without glasses or by correction with glasses) of at least 20/40 (Snellen) in one eye, and 20/100 (Snellen) in the other eye; form field of not less than 45 degrees in all meridians from the point of fixation; ability to distinguish red, green, and yellow.

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1.23 Hearing.

Adequate hearing.

1.24 Liquor, narcotics, and drugs.

Shall not be addicted to the use of narcotics or habit-forming drugs, or the excessive use of alcoholic beverages or liquors.

1.25 Driving experience.

Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

1.26 Driving Skill.

Competency by reason of experience or training to operate safely the type of motor vehicle or motor vehicles which he drives.

1.27 Knowledge of regulations.

Knowledge of rules and regulations issued by the Commission pertaining to the driving of motor vehicles.

1.28 Age.

Shall not be less than 21 years of age.

1.29 Knowledge of English.

Shall be able to read and speak the English language.

1.3 Physical examination.

1.31 Doctor's certificate required for new drivers.

On and after January 1, 1941, every motor carrier shall have in his files a certificate of physical examination signed by a qualified doctor of medicine for every new driver entering the motor carrier's employment, attesting that the doctor has examined said driver and found him to meet satisfactorily the qualifications set forth in Rules 1.21 to 1.23, inclusive. Said certificate shall be filed with the motor carrier within ten days of the new driver's entering the motor carrier's employment. For the purposes of this rule, a new driver shall be deemed to be any driver applying for employment as a driver who is unable to furnish a certificate of physical examination showing that he has been examined and qualified as required by this rule within one year prior to the date of his application for employment. This requirement shall also apply to owner-drivers, who become such on and after January 1, 1941.

1.32 Carrier's right to require additional examinations.

Nothing contained in Rule 1.31 shall be construed as to prevent a motor carrier from requiring physical examination of drivers in addition to those prescribed in that rule.

RECOMMENDED PRACTICES

(Not compulsory requirements)

The following form is recommended as a Standard Physical Examination form in connection with physical examination of drivers required under Rule 1.3:

RECOMMENDED STANDARD PHYSICAL EXAMINATION FORM

For Drivers of Buses and Trucks

(Note to Examining Physician: Read instructions before starting examination.)

Be sure to record an answer to each question. When negative or positive so state.

PERSONAL AND MEDICAL HISTORY

Name in full Age
last birthday Color Marital Status
..... S M W D Address:
Street City
State Usual occupation
..... Years of experience as operator of com-
mercial motor vehicles

History of Past Illnesses
(When positive insert date)

RECORD OF PHYSICAL FINDINGS

PHYSICIAN'S CERTIFICATE

to perform the usual duties incident to employment as a driver of commercial motor vehicles. This certificate is based upon information obtained in the making of a physical examination in accordance with the regulations of the Public Service Commission of

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South Carolina for the qualification of drivers and the standard form recommended for such examination. I have kept on file in my office this record of his examination.

Date Place
Signed
(Examining physician)
Address Driver's Signature

NOTE:—Motor carriers desiring to use the Recommended Standard Physical Examination Form and Physician's Certificate must obtain their own supplies of such forms. The forms should be reproduced in size considerably larger than here shown.

GENERAL INSTRUCTIONS FOR MAKING PHYSICAL EXAMINATION AND RECORDING FINDINGS

*Be sure to record an answer to each question
When negative or positive so state*

MEDICAL HISTORY

The purpose of this physical examination is to detect the presence of physical defects of such a character and extent as to affect the applicant's ability to safely operate a motor vehicle. The examination should be made carefully and at least as complete as is indicated by the attached form. Defects may be recorded which do not, because of their character or degree, indicate that a certificate of physical fitness should be denied. The presence, however, of these defects should be discussed with the applicant and he should be encouraged to take the necessary steps to insure correction particularly of those which if neglected might lead to a condition likely to affect his ability to drive safely. Careful inquiry regarding past illness, the character and date of such illness, may reveal cause for defects found upon physical examination. Lack of knowledge concerning the etiology of certain defects may result in the rejection for employment. Such data also may indicate the need for making certain laboratory tests. Certain serological and laboratory tests will frequently be made by State Department of Health laboratories without charge.

General Appearance and Development.—Notice serious under or over weight; any posture defects; perceptible limp, anemia, tremor or other form of nervousness such as might be caused by chronic alcoholism, thyroid intoxication, or other illnesses. The rules of the Commission provide that no driver shall be addicted to the use of narcotics or habit-forming drugs, or the excessive use of alcoholic beverages or liquors.

Height and weight.—Stripped to the waist with shoes and socks removed.

Head—Eyes.—The telebinocular, Snellen chart, and other approved tests may be used to measure visual acuity. It is desired, however, when other than the Snellen chart is used, that the results of such test be expressed in values comparable to the standard Snellen chart. If applicant wears glasses, these should be worn while applicant's visual acuity is being tested. Indicate on record by encircling appropriate phrase on form "without glasses" or "with glasses if worn". In recording distant vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, corneal scar, exophthalmos or strabismus uncorrected by glasses as determined by the simple cover test.

Ears.—Note evidence of mastoid or middle ear disease; discharge. In recording hearing record 20 feet as normal distance for conversational voice and record deviation from normal as fraction with 20 feet as denominator and actual distance as numerator.

Mouth.—Note evidence of infection, pyorrhea.

Throat.—Note evidence of disease, enlarged or infected tonsils.

Thorax—Heart.—Stethoscopic examination is required. Note murmurs and arrhythmia.

Blood pressure.—May be recorded with either spring or mercury column type of sphygmomanometer.

Pulse.—Normal pulse taken after being seated at least 2 minutes then have applicant stand and placing one foot on the seat of an ordinary chair raise his body to an erect position 20 times in 30 seconds. Pulse rate should return to his normal after 2 minutes rest. Because of abnormal conditions, some applicants will be unable to do this. This test has been found helpful in ascertaining physical ability for work.

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Lungs.—It is necessary that the auscultatory cough be used. Tuberculosis, if suspected state whether active or arrested, and if arrested, your opinion as to how long it has been quiescent. Sputum to be examined for tubercle bacilli in all suspected cases. Sample may be sent to the State Health Department.

Abdomen—Scars.—If present state whether recent and if abnormally tender or if there is any evidence of hernia at the site of scar.

Abnormal masses.—If present note tenderness and whether or not individual knows how long they have been present.

Tenderness.—When noted state where most pronounced and cause suspected.

Hernia.—Note whether no hernia, but impulse on coughing; no hernia or impulse, but abnormally large rings. Any hernia should be noted, and if present state whether it is retained by well-fitted truss.

Genito-Urinary.—When scars or urethral discharge are present indicate patient's reason for same and when indicated submit smear of discharge to laboratory for examination.

Reflexes.—If positive Rhonberg is reported, indicate degree. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and increased when foot is actually lifted from the floor following light blow upon the patella; otherwise as normal.

Extremities—Upper.—Note deformities and limitation of motion.

Lower.—Note deformities, limitation of motion; varicose veins. In case of hand deformities note particularly whether or not sufficient grip is present to enable driver to secure a grip on the wheel. Show chronic ulcers. Note any atrophy or paralysis.

Spine.—Note deformities and limitation of motion. Be sure to record loss of foot, leg, fingers, hand or arm, or impairment of use thereof, or other structural defect or limitation, likely to interfere with safe driving.

Laboratory findings.—Urine analysis is indicated whenever systolic blood pressure is over 150 and diastolic over 100 and such other times as medical history or findings upon physical examination may indicate that they are necessary. A serological test should always be taken in case of those giving positive history of leutic infection or present physical findings upon examination presenting possibility of latent syphilis.

Upon completion of the examination, physician should always date and sign his record of same.

PART 2.

DRIVING OF MOTOR VEHICLES.

2.01. Compliance required.

Every motor carrier and his or its officers, agents, employees, and representatives concerned with the transportation of persons or property by motor vehicle shall comply with the following regulations and shall become conversant therewith.

2.02. Carrier may enforce additional rules.

Nothing contained in these regulations shall be construed as prohibiting any motor carrier from enforcing additional rules and regulations relating to safety of operation, not inconsistent with these regulations, tending to a greater degree of precaution against accidents.

2.03. Reckless driving forbidden.

No motor vehicle shall be driven recklessly, or so as to endanger life, limb, or property.

2.04. Driving while ill or fatigued forbidden.

No motor vehicle shall be driven by any driver while his ability or alertness is so impaired through fatigue, illness, or any other cause as to make it unsafe for him to drive or to continue to drive a motor vehicle, nor shall he be required or knowingly be permitted to drive while in such condition, except in case of grave emergency where the hazard to passengers would be increased by observance of the foregoing provisions.

2.05. Use of alcoholic beverages on duty forbidden.

No driver shall go on duty while under the influence of, nor drink while on duty, any alcoholic beverage or liquor, whatever its alcoholic content; nor shall he knowingly be permitted so to do.

2.06. Control of speed.

2.061. Speed must be Reasonable and Prudent.—No motor vehicle shall be driven at a speed greater than is reasonable and prudent, having due regard to weather, traffic, intersections, width and character of the roadway, type of motor vehicle, and any other conditions then existing.

2.062. Legal Limits Must Be Observed.—In no event shall a motor vehicle be driven in or through this State or legal subdivision thereof at a speed greater than that permitted by this State, or legal subdivision thereof.

2.063. Reduced Speed at Night.—During the night time, speed shall be reduced in keeping with reduced visibility. (See also rule 2.31)

2.07. Equipment to be in good working order.

No Motor Vehicle shall be driven unless the driver thereof shall have satisfied himself that the following required parts and accessories are in good working order:

Lighting devices and reflectors	Rear-vision mirror.
Brakes, both service and hand.	Tires.
Horn.	Steering mechanism.
Windshield wiper.	Coupling devices.

2.08. Emergency equipment must be in place².

No motor vehicle shall be driven unless the following required accessories are in place and ready for use in case of emergency:

2.081. On every Bus, Truck, or Tractor—

(a) At least one fire extinguisher, properly filled, securely mounted in a bracket, and available for immediate use; provided, however, that this requirement shall not apply to taxicabs.

(b) One red lantern, when projecting loads are carried.

(c) One red-cloth flag, when projecting loads are carried.

(d) At least one spare electric bulb for each kind of electric lamp where such electric lamp is used for any of the lighting devices required by these regulations.

(e) At least one spare electric fuse of each kind and size used for any of the electric lighting circuits on the motor vehicle.

(f) One set of tire chains, for all vehicles likely to encounter conditions requiring them.

(g) Three flares (Pot torches), properly filled; or three red electric lanterns, equipped with batteries in proper condition, and available for immediate use.

(h) At least three fuses (unless red electric lanterns are used as warning signals), so mounted as to be protected from oil and moisture, and available for immediate use.

(i) At least two red cloth flags with standards.

2.082. On Every Bus—

(a) All items required by Rule 2.081, and in addition:

(b) One metal first-aid kit.

(c) One hand ax available for immediate use.

2.083. On Every Motor Vehicle Driven Singly, or On the Towing Motor Vehicle of any Combination of Motor Vehicles, in Transit As a Drive-away Operation—

(a) All items required by Rule 2.081, except that a fire extinguisher shall not be required on any such motor vehicle.

2.09. Safe loading.

2.091 Distribution and Securing of Load.—The load on every motor vehicle transporting property shall be properly distributed, and if necessary, secured, in order to prevent unsafe shifting of the load or unsafe operation of the vehicle.

2.092 Fastenings Secure.—No motor vehicle shall be driven unless the driver thereof shall have satisfied himself that the tailboard or tailgate, tarpaulins, spare tires, and all means of fastening the load are securely in place.

2.093 Load Not to Interfere With Driver.—No motor vehicle shall be so loaded as to obscure the driver's view ahead, or to the right and left sides, or to interfere with the free movement of his arms or legs, or to prevent his free and ready access to the accessories required for emergencies.

2.094 Loading of Buses.—All baggage, freight, or express carried in any bus shall be so loaded as not to interfere with the free and ready entering or leaving such bus, and shall be so stowed as to prevent falling onto or against any passenger.

² See Rule 3.349, for specifications.

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2.10. "Clear Course" before starting.

No motor vehicle shall be set in motion until due caution has been taken to ascertain that the course is clear.

2.11. Keep to the right.

Every motor vehicle shall be driven as far to the right side of the traveled portion of the highway as is practicable.

2.12. Maintain adequate space between vehicles.

Sufficient space shall be maintained, whenever conditions permit, between vehicles proceeding in the same direction so that an overtaking vehicle may enter and occupy such space without danger. This rule shall not be construed to prevent overtaking and passing another vehicle.

2.13. Precautions at railroad grade crossings.

2.131 Certain Vehicles Must Stop.—Every motor vehicle transporting—

- (a) Passengers,
- (b) Dangerous explosives,³
- (c) Chlorine,
- (d) Class B or Class C poisons,³ inflammable compressed gases, or corrosive liquids in cargo tanks,
- (e) Class A poisons,³ and
- (f) Every motor vehicle used for the transportation of inflammable liquids in cargo tanks, whether loaded or empty, shall, upon approaching any railroad grade crossing, be brought to a full stop within 50 feet but not less than 10 feet, from the nearest rail of such railroad grade crossing, and shall not proceed until due caution has been taken to ascertain that the course is clear; provided, however, that such full stop shall not be required at a street-car crossing within a business or residence district, nor at a railroad grade crossing protected by a watchman or traffic officer on duty or by a traffic-control "stop and go" signal (not railroad flashing signal) giving positive indication to approaching vehicles to proceed.

2.132 Other Vehicles Must Slow Down and Be Prepared to Stop.—The speed of any other motor vehicle shall, upon approaching a railroad grade crossing, be reduced to a rate that shall enable a stop to be made before reaching the nearest rail of such crossing, and the crossing shall not be traversed until due caution has been taken to ascertain that the course is clear.

2.133 No Gear Changes on Crossings.—In all cases where gear change may be made at the option of the driver, crossing shall be made only in such gear that there shall be no necessity for changing gears while traversing such crossing.

2.134 Driver Must Ascertain That Course is Clear.—Nothing contained in this rule shall be so construed as to relieve the driver of the responsibility in any case of exercising due caution to ascertain that the course is clear before proceeding over such crossing.

2.14. Precautions at drawbridge.

2.141 Vehicles Transporting Passengers Must Stop.—Every motor vehicle transporting passengers shall, upon approaching any drawbridge, known or marked as such, be brought to a full stop, not less than 50 feet from the lip of the draw, and shall not proceed unless the draw is closed; provided, however, that such full stop shall not be required at any drawbridge protected by a watchman or traffic officer on duty, or by a traffic-control "stop and go" signal giving positive indication to approaching vehicles to proceed.

2.142 Other Vehicles Must Slow Down and Be Prepared to Stop.—Any other motor vehicle upon approaching any drawbridge shall be driven at such speed as to permit it to be stopped before reaching the lip of the draw, and shall proceed only if the draw is closed.

³ Special requirements for the transportation of explosives and other dangerous articles will be found under Rule 90 of the Commission's General Rules governing the operation of Motor Vehicle Carriers. For the purpose of Rule 2.131, the three classes of poisons listed therein may be defined as follows:

"CLASS A POISON". Any poisonous gas or liquid of such nature that a very small amount of the gas, or vapor of the liquid, mixed with air is dangerous to life.

"CLASS B POISON". Any poisonous liquid or solid of such nature that it is chiefly dangerous on external contact with the body or by being taken internally.

"CLASS C POISON". A liquid or solid substance which upon contact with fire or heat, gives off dangerous or intensely irritating fumes, such a tear-gas and the like, but not including any poisonous article, Class A.

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2.143 Driver Must Ascertain That Course is Clear.—Nothing contained in this rule shall be so construed as to relieve the driver of the responsibility in any case of exercising due caution to ascertain that the draw is closed.

2.15. Other users of highway must not be endangered.

No motor vehicle, except in case of emergency shall be stopped, its speed suddenly decreased, nor its course or direction changed, unless the driver thereof shall have exercised due caution to ascertain that such acts can be performed without endangering other users of the highway.

2.16. Vehicle must be in proper position for making turns.

Upon all highways any right turn shall be made from a position which is as close as practicable to the extreme right side of the traveled portion of the highway. Upon two-way highways any left turn shall be made from a position which is as close as practicable to the center of the traveled portion of the highway. Upon one-way highways and upon highways on which the opposing streams of traffic are separated by a dividing strip or zone, any left turn shall be made from a position which is as close as practicable to the extreme left side of the traveled portion of such highways. In all cases turns shall be made with due caution, having due regard to the length of the motor vehicle and any load thereon, the width of the roadway, and other traffic. Before making any turn the motor vehicle shall be driven into the proper lane well in advance of the intersection.

2.17. Special care in overtaking or passing.

No motor vehicle shall be driven past a vehicle or vehicles proceeding in the same direction, unless there is ample visible space ahead to do so without endangering any other user of the highway; if necessary, an audible signal of intention to pass shall be sounded. After passing, the motor vehicle shall not be returned to the right side of the roadway until safely clear of the overtaking vehicle or vehicles.

2.18. Overtaking must not be prevented by speeding up.

The speed of a motor vehicle shall not be increased to prevent being overtaken by another vehicle attempting to pass.

2.19. Vehicle must be in gear on down grade.

No motor vehicle shall be driven upon a down grade with gears in neutral or clutch disengaged.

2.20. Special care required in passing stopped buses.

No motor vehicle when meeting or overtaking any bus, other than a school bus, stopped for the purpose of discharging or taking on passengers, shall be driven past such bus except with extreme caution, and only if the course ahead is known to be clear; *Provided*, that all motor vehicles when meeting or overtaking any school bus stopped for the purpose of discharging or taking on school children shall come to a full stop and shall remain stopped until said children are taken on or discharged and until such school bus has moved on.

2.21. Precautions when vehicle is left unattended.

No motor vehicle shall be left unattended until after the parking (hand) brake has been securely set and all other reasonable precautions have been taken to prevent its movement while unattended.

2.22. Vehicle when stopped must not interfere with other traffic.

No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended, upon the traveled portion of any highway outside of a business or residence district, when it is practicable to stop, park, or leave the motor vehicle off the traveled portion of such highway. When conditions make it impracticable to move the motor vehicle from the traveled portion of the highway, every effort shall be made to leave all possible width of the highway opposite such standing motor vehicle of the free passage of other vehicles, and care taken to provide a clear view of such stopped motor vehicle as far as possible to the front and rear. (See also Rule 2.24.)

The burden of proving the necessity or excuse for stopping on the main-traveled portion of the highway, or the practicability of moving off such portion of the highway, within the meaning of this section is upon him who makes such stop. *Ayers v. Atlantic Greyhound Corp.*, 208 S. C. 267, 37 S. E. (2d) 737 (1946).

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2.23. Emergency signals for disabled vehicles.

Whenever any motor vehicle is disabled upon the traveled portion of the highway or the shoulder next thereto, except within a business or residence district of a municipality, the following requirements shall be complied with during the period of such disablement:

2.231 Placing of Fusees and Flares.—During the time that lights are required (see Rule 2.25), except as provided in Rules 2.232, 2.233, and 2.234, a lighted fusee shall be immediately placed on the roadway at the traffic side of the motor vehicle; as soon thereafter as possible and in any case within the burning period of the fusee, three lighted flares (pot torches) shall be placed on the roadway, as follows:

(a) One in the center of the lane of traffic occupied by the disabled motor vehicle and not less than 40 paces (approximately 100 feet) distant therefrom in the direction of traffic approaching in that lane.

(b) One not less than 40 paces (approximately 100 feet) from such vehicle in the opposite direction, and

(c) One at the traffic side of such vehicle approximately 10 feet rearward or forward thereof;

(d) Provided, however, that if the motor vehicle is disabled within 300 feet of a curve, crest of a hill, or other obstruction to view, the flare in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than 40 paces (approximately 100 feet) nor more than 120 paces (approximately 300 feet) from the disabled vehicle;

(e) Provided further, that care shall be taken in the placing of any flare (liquid burning pot torch), fusee, or any signal produced by a flame, to prevent igniting any gasoline or other inflammable liquid or gas.

2.232 Use of Red Electric Lanterns for Certain Tank Motor Vehicles.—For every motor vehicle used for the transportation of inflammable liquids or inflammable compressed gases in cargo tanks, whether loaded or empty, the use of flares (pot torches), fusees, or any signal produced by a flame is prohibited, and lighted red electric lanterns shall be used in lieu thereof. One of the said red electric lanterns shall be immediately placed on the roadway at the traffic side of the motor vehicle and immediately thereafter the two other red electric lanterns shall be placed to the front and rear of the motor vehicle in the same manner prescribed in Rule 2.231 for the placement of lighted flares (Pot Torches).

Rule 2.233 Optional use of Red Electric Lanterns or Red Emergency Reflectors.—For every motor vehicle not required to carry Red Electric Lanterns or Red Emergency Reflectors, but electing to carry them in lieu of flares (pot torches) and fusees, the placement of such lighted Red Electric Lanterns or Red Emergency Reflectors in the event of disablement shall be as set forth in Rule 2.232, and such Red Electric Lanterns or Red Emergency Reflectors shall meet interstate Commerce Commission specifications. (Filed Secretary of State's office September 7, 1949.)

2.234 Placing of Flags.—During such time as lights are not required, red flags shall be placed in the manner prescribed for flares or red electric lanterns, except that no flag shall be required to be placed at the side of the vehicle; provided, however, that if such disablement continues into the period when lights are required, lighted flares or lighted red electric lanterns shall then be placed as prescribed.

Cited in *Ayers v. Greyhound Corp.*, 208 S. C. 267, 37 S. E. (2d) 737 (1946).

2.24. Emergency signals for stopped vehicles.

Whenever any motor vehicle is stopped upon the traveled portion of the highway or the shoulder next thereto, except within a business or residence district of a municipality, for any cause other than disablement (see Rule 2.23) or necessary traffic stops, the following requirements shall be complied with during the period of such stop:

2.241 Placing of Fusee or Red Electric Lantern.—During the time the lights are required (see Rule 2.25), a lighted fusee or lighted red electric lantern shall be immediately placed on the roadway at the traffic side of the motor vehicle.

2.242 Placing of Flares, Red Electric Lanterns, Or Flags.—If such stop exceeds or is intended to exceed 10 minutes, the placing of flares, red electric lanterns, or flags shall be in the manner prescribed under Rule 2.23.

2.25. When lighted lamps are required on moving vehicles.

Whenever any motor vehicle is driven upon a highway there shall be displayed the lighted lamps required under Rule 3.31 during the following times

- (a) During the period from one-half hour after sunset to one-half hour before sunrise;
- (b) During any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead; provided, that clearance and side-marker lamps need not be lighted when within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet.

2.26. Lights on parked or stopped vehicles.

Whenever any motor vehicle is parked or stopped upon the highway within a business or residence district of a municipality, whether attended or unattended, during the times mentioned in Rule 2.25, at least one white or amber light shall be displayed on the traffic side of the motor vehicle visible from a distance of 500 feet to the front of the motor vehicle, and at least one red light visible from a distance of 500 feet to the rear; provided, that headlights, if used, shall be dimmed or depressed.

2.27. Not more than four road-lighting lamps to be illuminated.

When a motor vehicle is equipped with more than four lamps of the character of head lamps, auxiliary road-lighting lamps, or spot lamps, not more than four such lamps shall be lighted at any one time.

2.28. Use of upper and lower head lamp beams.

Whenever the road-lighting equipment on a motor vehicle is so arranged that the driver may select at will between two or more distributions of light from head lamps or auxiliary road-lighting lamps or combinations thereof, directed to different elevations, the following requirements shall apply while driving during the times when lights are required:

2.281 Upper Beam.—When there is no oncoming vehicle within 500 feet, the driver shall use an upper distribution of light; provided, however, that a lower distribution of light may be used when fog, dust, or other atmospheric conditions make it desirable for reasons of safety, and when within the confines of municipalities where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead, and when following another vehicle within 500 feet.

2.282 Lower Beam.—When within 500 feet of an oncoming vehicle, the driver shall use a distribution of light so aimed that the glaring rays therefrom are not directed into the eyes of the oncoming driver.

2.29. Minimum visibility requirement for road-lighting lamps.

At no time while driving during the periods when lights are required shall any distribution of light be used which will not reveal a person or vehicle at a distance of at least 100 feet ahead under normal atmospheric conditions; provided, however, that dimmed headlights may be used in fog, or other abnormal weather or atmospheric conditions, when they tend to promote safety.

2.30. Spotlight must not blind other users of highway.

No spotlight shall be so aimed upon approaching another vehicle that any part of the high-intensity portion of the beam therefrom is directed beyond the left side of the motor vehicle upon which the spot lamp is mounted, nor more than 100 feet ahead of such motor vehicle.

2.31. Extreme caution required under hazardous conditions.

Extreme caution in the operation of motor vehicles shall be exercised under hazardous conditions, such as snow, ice, sleet, fog, mist, rain, dust, smoke, or any other condition which adversely affects visibility or traction, and speed shall be reduced accordingly.

2.32. Duties of driver in case of accident.

The driver of any motor vehicle involved in an accident resulting in death, personal injury, or property damage, shall forthwith stop at the scene of the accident and remain there until he shall have (a) rendered all possible assistance to injured persons; and (b) given to any person demanding the same his name and address, the name and address of his employer, if any, and his vehicle registration number. He shall take all reasonable precautions to prevent further accidents at the scene. As soon as possible after the

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accident the driver (if not himself a motor carrier) shall report all details of the accident to his employer or supervisory official.

2.33. Special precautions during fueling process.

2.331 Care to Prevent Ignition of Fuel.—No motor vehicle shall be fueled or be permitted to be fueled with engine running, or in the presence of any open flame. Care shall be exercised to prevent the ignition of fuel by lighted cigars, cigarettes, pipes, or other sources of ignition.

2.332 Electric Grounding of Fuel Hose.—The nozzle of the fuel hose shall be in contact with the intake of the fuel tank throughout the fueling process.

2.333 Fueling of Buses.—Fueling of a bus carrying passengers shall be reduced to the minimum number of times necessary in such transportation and in no event shall any such motor vehicle be fueled in a closed building with passengers aboard.

2.334. Reserve Fuel Supply.—No reserve supply of fuel shall be carried on any motor vehicle except in a properly constructed and mounted main fuel tank, cylinder, or auxiliary tank except that this provision shall not be construed to prohibit the use of a properly constructed cargo tank for liquefied fuel gases as a proper source of fuel supply.

2.34. Light or flag on end of projecting load.

During the time when lights are required to be displayed, there shall be attached to the rearmost extremity of any load which projects 4 feet or more beyond the rear of the body of the motor vehicle, or to any tailboard or tailgate so projecting, or to the rearmost extremity of any load carried on a pole trailer, at least one lighted red lantern securely fastened thereto, which shall be visible from a distance of at least 500 feet to the sides and rear under normal atmospheric conditions. At all other times a red-cloth flag shall be so displayed.

2.35. Tailboard must not obscure rear lights or reflectors.

No motor vehicle shall be operated with the tailboard or tailgate in such position as to obscure any of the required rear lights or reflectors.

2.36. Transportation of hitch-hikers and other unauthorized persons prohibited on property-carrying vehicles.

No person, other than employees of the motor carrier, shall be transported upon any motor vehicle not designed or adapted and used for the transportation of passengers unless specifically authorized in writing by the motor carrier; provided, however, that nothing contained in this rule shall be so construed as to prohibit the carrying of any person in case of an accident, or in other emergencies.

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PART 3

PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

3.1. Compliance required.

Every motor carrier shall comply with the following regulations.

3.2. Additional parts and accessories allowable.

Nothing contained in these regulations shall be construed to prohibit the use of additional parts and accessories, not inconsistent with these regulations, tending to increase the safety of operation of motor vehicles, and to prevent accidents.

Parts and accessories required on all motor vehicles⁴ (except in drive-away operations).

3.3. Equipment required on all motor vehicles (except in Drive-away operations).

Every motor vehicle except motor vehicles engaged in drive-away operation (see under Rule 3.5) shall be equipped as follows:

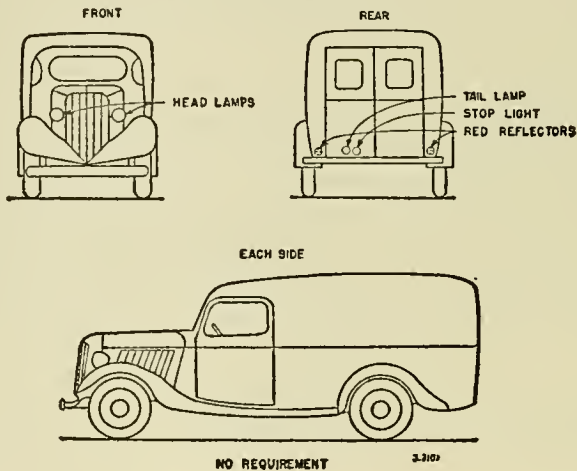
3.31 Lighting Devices and Reflectors on all vehicles.

3.3101 *Every bus or truck.*—On every bus or truck, whatever its size, there shall be at least the following lighting devices and reflectors:

(a) On the front, two head lamps, one at each side.

(b) On the rear, one red tail lamp; one red or amber stop light; two red reflectors, one at each side.

(Diagram to illustrate Rule 3.3101)



⁴ See under Rule 3.4 for additional requirements for new vehicles.

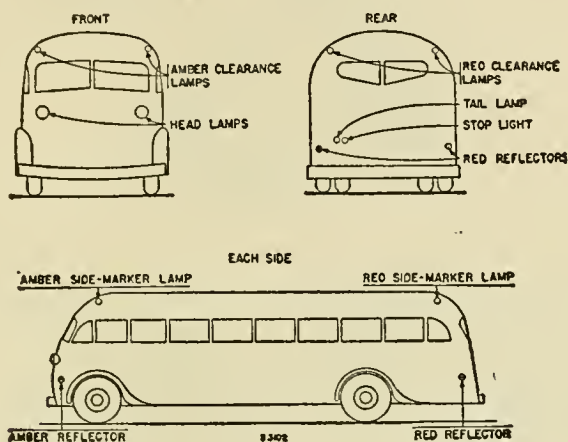
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Note.—Diagrams show clearance and side-marker lamps, and tail lamps and reflectors, as mounted separately. Clearance and side-marker lamps may be combined (Rule 3.3109). Reflectors may be incorporated in tail lamps (Rule 3.3115).

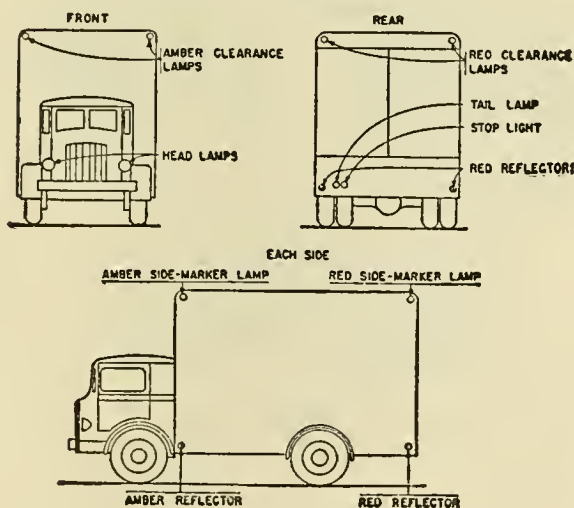
3.3102 *Every bus or truck 80 inches or more in width.*—On every bus or truck 80 inches or more in over-all width there shall be at least the following lighting devices and reflectors:

- (a) On the front, two head lamps, one at each side; two amber clearance lamps, one at each side.
- (b) On the rear, one red tail lamp; one red or amber stop light; two red clearance lamps, one at each side; two red reflectors, one at each side.
- (c) On each side, one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

(Bus Diagram to Illustrate Rule 3.3102)



(Truck Diagram to Illustrate Rule 3.3102)

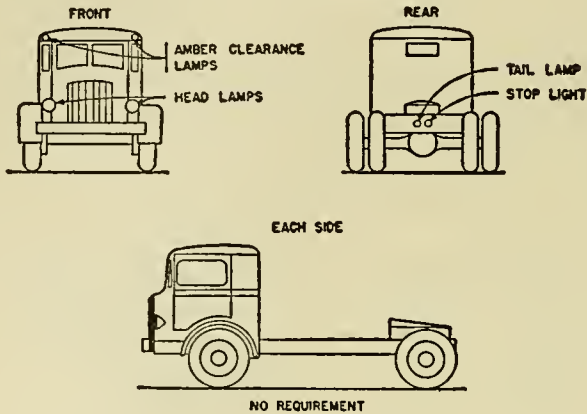


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3.3103 *Every tractor.*—On every tractor there shall be at least the following devices and reflectors:

- (a) On the front, two head lamps, one at each side.
- (b) On the rear, one red tail lamp; one red or amber stop light.

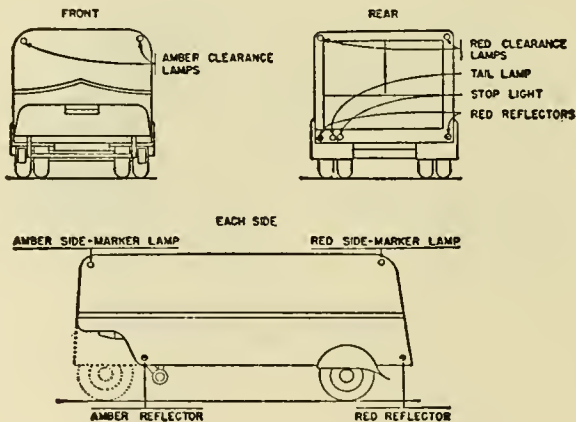
(Diagram to illustrate Rule 3.3103)



3.3104 *Every semitrailer or full trailer in excess of 3,000 pounds gross weight.*—On every semitrailer or full trailer having a gross weight in excess of 3,000 pounds there shall be at least the following lighting devices and reflectors:

- (a) On the front, two amber clearance lamps, one at each side.
- (b) On the rear, one red tail lamp; one red or amber stop light; two red clearance lamps, one at each side; two red reflectors, one at each side.
- (c) On each side, one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

(Diagram to illustrate Rule 3.3104)

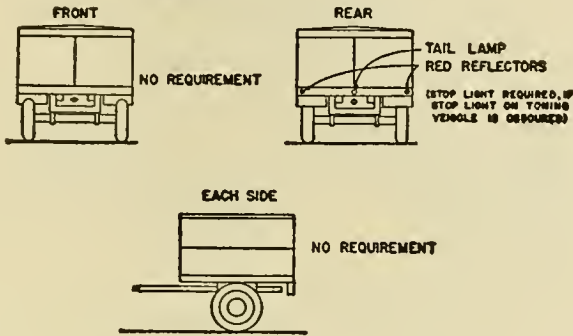


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3.3105 *Every semitrailer or full trailer weighing 3,000 pounds or less.*—On every semitrailer or full trailer having a gross weight of 3,000 pounds or less, there shall be at least the following lighting devices and reflectors:

- (a) On the front, no requirement.
- (b) On the rear, one red tail lamp; two red reflectors, one at each side; one red or amber stop light if the semitrailer or full trailer obscures the stop light on the towing vehicle.

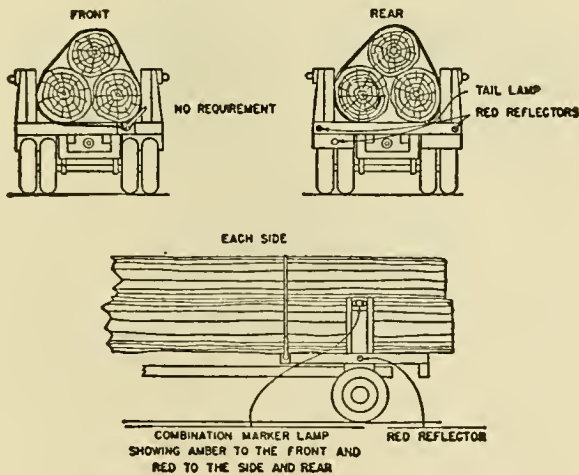
(Diagram to illustrate Rule 3.3105)



3.3106 *Every pole trailer.*—On every pole trailer there shall be at least the following lighting devices and reflectors;

- (a) On the front, no requirement.
- (b) On the rear, one red tail lamp; two red reflectors, one at each side, placed to indicate extreme width of the pole trailer or its load, whichever is wider. (See Rule 2.34 requiring red lantern or flag on end of projecting load.)
- (c) On each side, on the rearmost support for the load, one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate maximum width of the pole trailer or load; one red reflector, located at or near the rear.

(Diagram to illustrate Rule 3.3106)

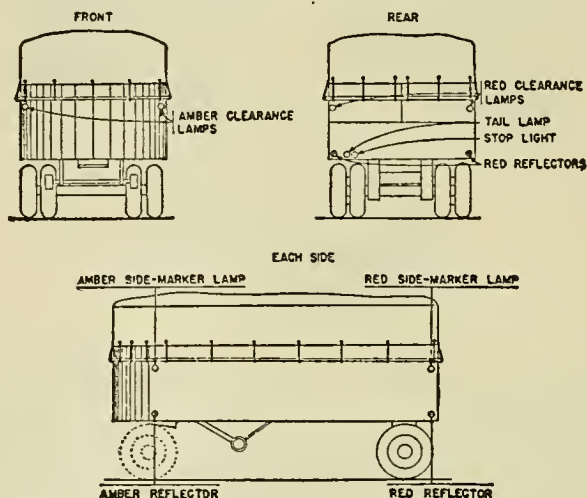


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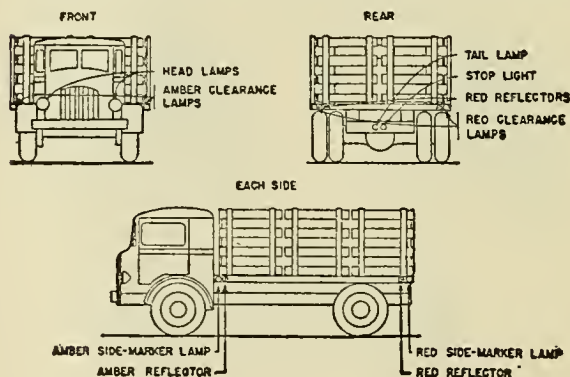
3.3107 *Electric lamps to be mounted permanently.*—Where electric lamps are used to meet the requirements of Rule 3.31, they shall be securely and permanently affixed to the permanent structure of the motor vehicle, except for the combination marker lamps on pole trailers prescribed in Rule 3.3106 (c).

3.3108 *Clearance lamps to indicate extreme width.*—Required clearance lamps shall be mounted in such manner as to indicate the extreme width of the motor vehicle and as near the top thereof as practicable.

(Diagram of "tarpaulin top" to illustrate mounting of clearance lamps on vehicles without permanent top or sides)



(Diagram of "stake-side body" to illustrate mounting of clearance lamps on vehicles without permanent top or sides)



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3.3109 *Side-marker lamps may be combined with clearance lamps.*—Side-marker lamps may be in combination with clearance lamps and may use the same light source.

3.3110 *Color of lighting devices.*—The color of lighting devices shall be as follows:

- (a) All front clearance lamps, and all side-marker lamps except the one on each side at or near the rear, on any bus, truck, tractor, semitrailer, full trailer, or pole trailer, shall when lighted display an amber color.
- (b) No red lighting device of any character shall be mounted at any place other than on or near the rear on any bus, truck, tractor, semitrailer, full trailer, or pole trailer.
- (c) All rear clearance lamps, the side-marker lamp on each side at or near the rear, and any other lamps mounted on the rear, on any bus, truck, tractor, semi-trailer, full trailer, or pole trailer, shall when lighted display a red color except as permitted by paragraphs (d), (e), (f) and (g) of this rule.
- (d) The stop light or other warning device on the rear of any motor vehicle may be red or amber.
- (e) The color blue or purple may be used on the front and rear of any motor vehicle in a device to indicate the speed at which the motor vehicle is moving.
- (f) Backing lights of any color may be mounted on the rear of any motor vehicle if the switch controlling such lights be so arranged that they may be turned on only when the motor vehicle is in reverse gear. Such backing lights when unlighted shall be so covered or otherwise arranged as not to reflect objectionable glare in the eyes of drivers of vehicles approaching from the rear.
- (g) No provision of this rule shall be so construed as to prohibit the use of any white light or lights for the purpose of illuminating license plates.

3.3111 *Visibility of clearance, side-marker, and tail lamps.*—Clearance, side-marker, and tail lamps shall when lighted be capable of being seen at a distance of 500 feet under normal atmospheric conditions during the time when lights are required. The light from front clearance lamps shall be visible to the front, from side-marker lamps to the side, and from rear clearance and tail lamps to the rear, of the motor vehicle.

3.3112 *Operation and visibility of stop light.*—Stop lights shall be actuated by application of the service (foot) brakes and shall be capable of being seen and distinguished from a distance of 100 feet to the rear of the motor vehicle in normal daylight; but shall not project a glaring or dazzling light. The stop light may be incorporated with the tail lamp.

3.3113 *Mounting of reflectors.*—No reflector required by these regulations shall be mounted upon the motor vehicle at a height to exceed 60 inches, nor less than 24 inches, above the ground on which the motor vehicle stands.

3.3114 *Visibility of reflectors.*—Every reflector shall be of such size and characteristics as to be readily visible at night from all distances within 500 feet to 50 feet from the motor vehicle when directly in front of a normal headlight beam.

Note.—Any reflex reflector approved by any of the States listed below or by any other State having equivalent or superior requirements, or any reflex reflector meeting the requirements as set forth in "S. A. E. Recommended Practice" for reflex reflectors, as promulgated by the Society of Automotive Engineers, 29 West 39th St., New York, N. Y., shall be deemed to meet the requirements of Rule 3.3114 with respect to performance characteristics. The listed States are New Hampshire, Massachusetts, Rhode Island, New York, and California.

3.3115 *Reflectors incorporated with tail lamps.*—One or both of the required rear red reflectors may be incorporated within the tail lamp or tail lamps, provided that any such tail lamps be located within the height limits specified for reflectors. Whether or not the rear reflectors are incorporated in tail lamps, they shall be located on the rear of the motor vehicle at opposite sides and shall also meet the requirements as to visibility set forth in Rule 3.3114.

3.3116 *Color of reflectors.*—All reflectors mounted on any bus, truck, tractor, semitrailer, full trailer, or pole trailer, shall reflect an amber color, except those placed on the rear and on the sides nearest to the rear thereof, which shall reflect a red color.

3.3117 *Detachable electrical connections.*—Means for establishing electric connection between towing and towed vehicles, and other detachable electric connections, shall be mechanically and electrically adequate, free of short or open circuits. Suitable provision shall be made in every detachable connection to afford reasonable assurance against accidental disconnection. Precaution shall be taken to provide sufficient slack in the connecting wire or cable without twisting or kinking thereof.

3.32 Brakes on all Vehicles.

3.321 Adequacy of Brakes.—Every bus, truck, and tractor shall be equipped with brakes adequate to control the movement of, and to stop and to hold, such vehicle, including two separate means of applying the brakes. At least one such braking means shall be a mechanical hand (parking) brake which shall employ a ratchet and pawl or other suitable locking and releasing mechanism to insure the setting and holding of at least one set of brakes. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the vehicle without brakes adequate to stop and to hold such vehicle.

3.322 Brakes on Combinations of Motor Vehicles.—Every combination of motor vehicles shall be equipped with brakes upon one or more of such motor vehicles, adequate to stop and to hold such combination of motor vehicles.

3.323 Brake performance.—Every motor vehicle or combination of motor vehicles, according to its type, shall be capable at all times and under all conditions of loading, of stopping on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of decelerating at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in feet per second per second (nearest $\frac{1}{2}$ ft.)
Vehicles or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	45	9.5

Note.—The means used for enforcement purposes to determine if a motor vehicle or combination of motor vehicles is in compliance with the provisions of the above paragraph, will be by an instrument or a machine capable of being read in feet to stop from 20 miles per hour, deceleration in feet per second per second, or other equivalent units; the manner of use of these instruments or machines to be prescribed for each type of instrument or machine so used.

3.324 Application of Brakes on Combinations of Motor Vehicles.—In any combinations of motor vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively or conjunctively may be employed.

3.325 Independence of Braking Controls.—Means of braking, the operating controls of which shall be independent of the operating controls of the service (foot) brake, shall be provided to hold any motor vehicle or combination of motor vehicle stationary on any up or down grade upon which it is to be operated.

3.326 Adequacy of Brake Tubing and Hose.—All brake tubing and brake hose shall be adequate in material and construction to insure proper continued functioning; sufficiently long and flexible to accommodate without damage all normal motions of the parts to which they are attached; and suitably secured and protected against chafing or other mechanical injury.

3.327 Brake Tubing and Hose Connections.—All connections for compressed air, vacuum or hydraulic braking systems shall be adequate in material and construction to insure proper continued functioning; and shall be so designed, constructed, and installed as to insure, when properly connected, an attachment free of leaks, constrictions, or other defects. Suitable provision shall be made in every detachable connection to afford reasonable assurance against accidental disconnection.

3.328 Brakes to be operative at all times.—All brakes with which motor vehicles are equipped shall be operative at all times. Means may be used for reducing the braking effort on the front wheels of any bus, truck, or tractor, provided that no such means shall be capable of making the front wheel brakes entirely inoperative.

3.33 Safety Glass on All Vehicles.

3.331 Replacements of Glass.—Whenever glass is replaced in the windshield and in the window next to the driver, in a bus, truck, or tractor; or in the doors and rear windows of a bus; or in the rear window of the driving compartment of a truck or tractor, the re-

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placement shall be made with safety glass, which shall conform to the requirements contained in the "American Standard, Safety Code for Safety Glass for Glazing Motor Vehicles Operating on Land Highways, Z 26.1-1938," approved March 7, 1938, by the American Standards Association, 29 West 39th Street, New York, N. Y.

3.332. *Case-Hardened Glass Prohibited.*—Case-hardened glass shall not be used for replacement purposes in any windshield, door, or window opening of any motor vehicle.

3.34 *Miscellaneous Parts and Accessories On All Vehicles.*

3.341 *Windshield wiper.*—Every motor vehicle having a windshield shall be equipped with at least one windshield wiper for cleaning rain, snow, or other moisture from the windshield in order to provide clear vision for the driver.

3.342 *Defrosting Device.*—Every motor vehicle which is equipped with a windshield, when operating under conditions such that ice or frost would be likely to collect on the windshield, shall be equipped with a device or other means for preventing or removing such ice or frost.

3.343 *Rear-Vision Mirror.*—Every truck, bus, and tractor shall be equipped with at least one rear-vision mirror, firmly attached to the motor vehicle and so located as to reflect to the driver a view of the highway to the rear.

3.344 *Horn.*—Every truck, bus, and tractor shall be equipped with a horn and actuating elements which shall be in such condition as to give an adequate and reliable warning signal.

3.345 *Fuel Containers.*

3.3451 *Fuel container not to project.*—No part of any fuel tank or container or intake pipe shall project beyond the sides of the motor vehicle.

3.3452 *Location of fuel container on bus.*—The intake pipe of any fuel tank or container, or any such container itself, shall not be located within or above the passenger-carrying portion of any bus.

3.3453 *Fuel containers of substantial construction.*—Every fuel tank or container supplying fuel for the propulsion of any motor vehicle shall be of substantial construction free from leaks and securely attached to the vehicle in a manner which constitutes good practice.

3.346 *Coupling Devices.*

3.3461. *Mounting of fifth wheel.*—The lower half of every fifth wheel mounted on any tractor or dolly shall be securely and permanently affixed to the frame thereof by U-bolts or by other means providing at least equivalent security.

3.3462 *Securing of fifth wheel parts.*—The upper half of any fifth wheel shall be fastened as securely to the semitrailer as is required for the securing of the lower half to a tractor or dolly.

3.3463 *Adequate locking of fifth wheel.*—Locking means shall be provided in every fifth wheel mechanism such that the upper and lower halves may not be separated without its manual release. A release mechanism actuated by the driver from the cab shall be deemed to meet this requirement.

3.3464 *Tow-bar.*—Every full trailer shall be equipped with a tow-bar which shall be structurally adequate for any weight drawn, properly mounted, without excessive slack, but with sufficient play to allow for universal action of the connection, and provided with a suitable locking means to prevent accidental separation of the towed and towing motor vehicles.

3.3465 *Tracking.*—The tow-bar and its connections shall be so designed, constructed and installed, and the full trailer shall be so designed and constructed as to insure that the full trailer will follow substantially in the path of the towing vehicle and without whipping or swerving from side to side.

3.3466 *Safety chains.*—Every full trailer shall be coupled with safety chains (stay chains or cables) to the motor vehicle by which it is to be towed, which devices together with their means of attachment shall be adequate to prevent the separation of the towed and towing vehicles in the event of failure of the tow-bar.

3.347 *Tires.*—Tires shall be provided on every motor vehicle adequate to support the maximum gross weight thereof.

3.348 *Drive Shaft (Propeller Shaft), Protection for Buses.*—Where the drive shaft (propeller shaft) of any bus extends lengthways under the floor thereof, it shall be protected by means of at least one U-shaped guard or bracket at that end of the shaft which is provided with a sliding connection (spline or other such device) to prevent the whipping of the shaft in the event of failure thereof or of any of its component parts. A shaft contained within a torque tube shall not be deemed to require any such device.

3.349 *Emergency Parts and Accessories Required.*

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3.3491 *On every bus, truck or tractor there shall be—*

- (a) At least one fire extinguisher, of a type inspected and labelled by Underwriters' Laboratories, Inc., 207 E. Ohio Street, Chicago, Ill., under Classification B. and utilizing an extinguishing agent which does not need protection from freezing, properly filled and securely mounted in a bracket. (minimum size: one-quart carbon tetrachloride type, or two-pound carbon dioxide type.) This requirement shall not apply to any taxicab.
- (b) One red lantern, when projecting loads are carried.
- (c) One red cloth flag, not less than 12 inches square, when projecting loads are carried.
- (d) At least one spare electric bulb for each kind of electric lamp used for any of the lighting devices required by these regulations.
- (e) At least one spare electric fuse of each kind and size used for any of the electric lighting circuits on the motor vehicle.
- (f) One set of tire chains, for all vehicles likely to encounter conditions requiring them.
- (g) Three flares or three red electric lanterns; each flare (liquid-burning pot torch) or red electric lantern shall be capable when lighted of being seen and distinguished at a distance of 500 feet under normal atmospheric conditions at night time; each flare (pot torch) shall be capable of burning for not less than 12 hours in 5-miles-per-hour wind velocity, capable of burning in any air velocities from zero to 40 miles per hour, substantially constructed so as to withstand reasonable shocks without leaking, and shall be carried in a metal rack or box; each red electric lantern shall be capable of operating continuously for not less than 12 hours and shall be substantially constructed so as to withstand reasonable shocks without breakage.
- (h) At least three red-burning fusees (if carrier elects to carry and use flares as warning signals); each fusee shall be made in accordance with specifications of the Bureau of Explosives, 30 Vesey Street, New York, N. Y., and so marked, and shall be capable of burning at least 15 minutes.

Note.—Flares (pot torches), fusees, oil lanterns, or any signal produced by a flame, shall not be carried or used as warning signals for motor vehicles used in the transportation of inflammable liquids or inflammable compressed gases in cargo tanks; but in lieu of such flares and fusees, three red electric lanterns shall be carried. See Rule 2.232.

- (i) At least two red cloth flags, not less than 12 inches square, with standards.

3.3492 *On every bus there shall be—*

- (a) All items listed under Rule 3.3491 and in addition:
- (b) One metal first-aid kit, heavy duty 10-unit type.⁵
- (c) One hand ax.

⁵ Specification 269-A, June 8, 1938, Branch of Supply, Procurement Division, Treasury Department, Washington, D. C., Specification for Kits, First Aid, illustrates the type of first-aid kit meeting the requisites of this rule. The requirements and contents of a 10-unit first-aid kit in the above specification, quoted in part, are as follows:

E-2b (1)—Class 1 (10-unit).—The case shall measure approximately 8 by 4½ by 2½ inches and shall be made of sheet steel not less than 0.037 inch in thickness. All seams and joints shall be welded. The cover shall be attached to the base by means of a continuous piano hinge, spot-welded in place. The case shall be so designed that the cover shall open to an angle of 90 to 100 degrees with the base, and at that point a substantial stop be provided; such stop shall in no manner interfere with the smooth operation of the cover.

E-2b (1) e—Contents.—Each case shall be provided with a contents label placed on the inside of the cover, giving brief instructions for first-aid treatment and arrangement of contents. The case shall contain the following: (See also Paragraph E-3 for detailed specifications as to the content requirements.)

4-inch bandage compresses, 1 package.
 2-inch bandage compresses, 1 package.
 1-inch adhesive compresses, 2 packages.
 40-inch triangular bandage, 1 package.
 Tourniquet and forceps, 1 package.
 Burn ointment, 1 package.
 Ammonia inhalants, 1 package.
 Iodine applicators, 1 package.
 Wire splint, 1 package.

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PARTS AND ACCESSORIES REQUIRED ON NEW VEHICLES

(Acquired on and after January 1, 1941)

3.4 Additional equipment required on new vehicles.

Every new motor vehicle acquired by a motor carrier on and after January 1, 1941, shall in addition to the requirements hereinbefore set forth, be at all times equipped as follows:

3.41 Lighting Devices on New Vehicles.

3.411 Electric Lamps.—All lamps required by these regulations to be securely and permanently affixed to any new motor vehicle shall be electric.

3.412 Dual or Multiple Beam Head Lamps.—Head lamps on any new motor vehicle shall be of the dual or multiple beam type.

3.413 Adequate Wiring and Connections.—Each piece of electrical equipment on any new motor vehicle except high-tension ignition circuits, shall be connected to the source of its power with suitably insulated stranded wire of electrical conductivity not less than the equivalent of No. 16 B & S gage solid copper wire. This shall not be so construed as to prohibit the use of the frame or other metal parts of such motor vehicle as a return ground system. The wiring and all connections and contacts, except the starter circuit, shall in any event be such that, with all electrical devices on the motor vehicle, except the starter, in operation and the generator operating at its maximum output, the voltage drop to any lamp or other device shall not be excessive.

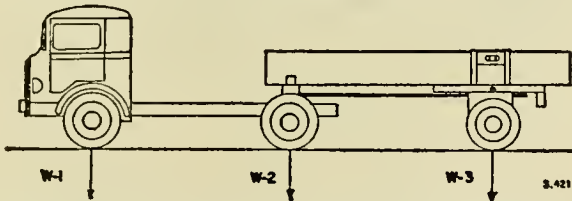
3.42 Brakes On New Vehicles.

3.421 Brakes required on all wheels.—Every new motor vehicle shall be equipped with brakes on all wheels, excepting any full trailer, semi-trailer, or pole trailer of a gross weight not exceeding 3,000 pounds; provided, however, that the gross weight of any such full trailer or 4-wheel pole trailer without brakes shall not exceed 40 per cent of the gross weight of the towing vehicle, and that the gross weight of any such semitrailer or two-wheel pole trailer without brakes shall not exceed 40 per cent of the gross weight of the towing vehicle when connected to the semitrailer or two-wheel pole trailer.

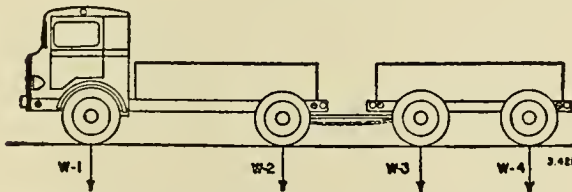
3.422 Automatic Application of Brakes Upon Break-Away.—Every new full trailer, semitrailer, and pole trailer (except those weighing 3,000 pounds gross or less), shall be equipped with brakes of such a character as to be automatically applied upon break-away from the towing vehicle, and means shall be provided to maintain application of the brakes in such case for at least 15 minutes.

3.43 Safety Glass on New Vehicles.

(Diagrams to illustrate brake requirements for light trailers)



Semitrailer or 2-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if W-3 is greater than 40 percent of the sum of W-1 and W-2



Full trailer or 4-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if the sum of W-3 and W-4 is greater than 40 percent of the sum of W-1 and W-2

3.431 Safety Glass in Certain Specified Openings.—Whenever glass is used in the windshield and in the window next to the driver in a bus, truck, or tractor; or in the doors and rear windows of a bus; or in the rear window of the driving compartment of a truck or tractor, it shall be safety glass which shall conform to the requirements contained in the "American Standard, Safety Code for Safety Glass for Glazing Motor Vehicles Operating on Land Highways, Z26.1-1938," approved March 7, 1938, by the American Standards Association, 29 West 39th Street, New York, N. Y.

3.432 Case-Hardened Glass Prohibited.—Case-hardened glass shall not be used in any windshield, door or window opening of any motor vehicle.

3.44 Miscellaneous Parts and Accessories on New Vehicles.

3.441 Speedometer.—Every new bus, truck, and tractor shall be equipped with one speedometer or tachometer which shall be operative with reasonable accuracy.

DRIVE-AWAY OPERATIONS

3.5 Drive-away operations.

Every motor vehicle used in drive-away operations shall be equipped according to its type and classification, as follows:

3.51 Lighting Devices and Reflectors, Drive-Away Operations.

3.511 Singly Driven Motor Vehicles Less Than 80 inches Wide.—On every motor vehicle 80 inches or more in over-all width, driven singly in any drive-away operation, there shall be at least the lighting devices and reflectors required by Rule 3.3101.

3.512 Single Driven Motor Vehicles More than 80 inches Wide.—On every motor vehicle 80 inches or more in over-all width, driven singly in any drive-away operation, there shall be at least the lighting devices and reflectors required by Rule 3.3102.

3.513 Combination Motor Vehicles.—On motor vehicles in combination in any drive-away operation employing either tow-bar or saddle-mount connections, there shall be at least the following lighting devices and reflectors:

- (a) On the front of the towing vehicle, two head lamps, one at each side.
- (b) On each side of the towing vehicle and near the front thereof, one combination marker light showing an amber color to the front and side.
- (c) On each side of the towed vehicle and near the rear thereof, one combination marker lamp showing red to the rear and side.
- (d) On the rear of the towing vehicle, one red tail lamp.
- (e) On the rear of the towed vehicle, one red tail lamp; one red or amber stop light; two red reflectors, one at each side.

3.514 Temporary Mounting.—Required combination marker lamps and reflectors may be temporarily mounted on the motor vehicle or motor vehicles during the time they are in transit in any drive-away operation but in any case must be firmly attached thereto. Wiring shall be firmly attached to the motor vehicle or motor vehicles, and the wire used shall be suitably insulated stranded wire of electrical conductivity not less than the equivalent of No. 16 B & S gage solid copper wire.

3.515 Color, Visibility, and Electrical Connections.—The required lighting devices and reflectors for any drive-away operation shall meet the requirements set forth in Rules 3.3110 to 3.3117, inclusive, as to color, visibility, and adequacy of electrical connections.

3.52 Brakes, Drive-Away Operations.

3.521 Brake Performance.—Every drive-away operation, whether of single motor vehicle or combination, shall be capable of meeting the requirements of Rule 3.323 as to brake performance; provided, however, that brakes need be operative only on the towing vehicle.

3.53 Miscellaneous Parts and Accessories, Drive-Away Operations.

3.531 Items to be Carried.—Every single motor vehicle and the towing vehicle of every combination of motor vehicles operating in drive-away operations shall be equipped with a windshield wiper, rear-vision mirror, horn, at least one red lantern and one red cloth flag when projecting loads are carried, at least one spare electric bulb for each kind of electric lamp with which it is equipped, one spare electric fuse of each kind and size used for any of the electric lighting circuits on the motor vehicle, three flares (liquid-burning pot torches) or three red electric lanterns, at least three red burning fuses (if flares are carried), at least two red cloth flags; and the specifications of these items of equipment shall be as set forth under Rule 3.349.

3.532 Tow-Bar and Fifth Wheel Requirements.—No motor vehicle shall be towed in drive-away operations by means other than a tow-bar or fifth wheel connection which shall meet the requirements set forth below:

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3.5321 *Tow-bar to be structurally adequate and properly mounted.*—The tow-bar assembly shall be structurally adequate for any weight drawn, properly mounted, and with a joint to permit of relative vertical motion between the towed and towing motor vehicles without stress of parts.

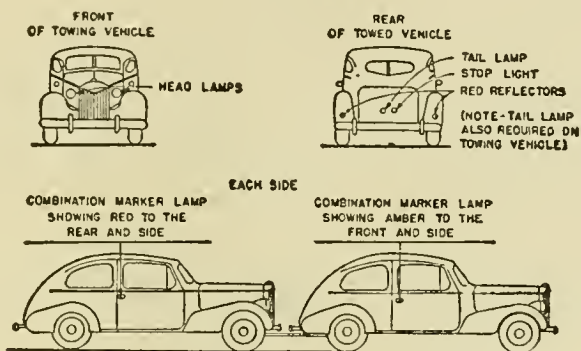
3.5322 *Fastening of tow-bar.*—Adequate means shall be provided for securely fastening the respective ends of the tow-bar to the towed and towing vehicles.

3.5323 *Tow-bar connection to steering mechanism.*—The tow-bar shall be provided with suitable means of attachment to and actuation of the steering mechanism of the towed car. Such attachment shall be of such nature as to provide a sufficient angularity of movement of the front wheels of the towed vehicle that it may follow substantially in the path of the towing vehicle without cramping of the tow-bar. For this purpose the tow-bar shall be provided with suitable joints to permit such movement.

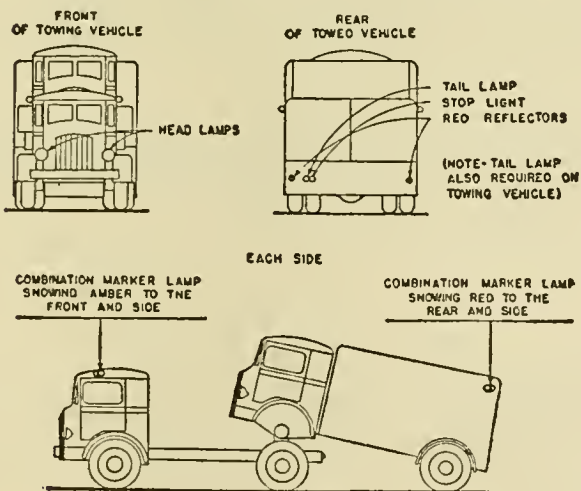
3.5324 *Fifth wheel connection.*—The upper and lower halves of any fifth wheel (saddle-mount) connection shall be attached securely, although not required to be permanently attached, to the towing and towed motor vehicles, respectively, by means affording equivalent security to those set forth in Rules 3.3461, 3.3462 and 3.3463, for fifth wheel connections.

3.54 *Number of Drive-Away Vehicles in Combination.*—No more than one motor vehicle shall be towed in any combination of motor vehicles in any drive-away operation. This shall not be so construed as to prohibit the carrying on the structure of the towing vehicle of an additional motor vehicle or motor vehicles.

(Diagram of "tow-bar" operation—Rule 3.513)



(Diagram of "saddle mount" operation—Rule 3.513)



3.513

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PART 4

REPORTING OF ACCIDENTS

4.1 Accident reports confidential.

Accident reports made by motor carriers in compliance with these regulations shall be for the information of the Commission, and shall not be open to public inspection.

4.2 Reportable accidents.

Every motor carrier shall report to the Commission in the manner hereinafter prescribed, every accident in which a motor vehicle operated by him or it is involved, and from which there results an injury to or death of any person, or property damage to any and all vehicles, cargo, or other property involved, to an apparent extent of \$25.00 or more.

4.3 Manner of reporting accidents.

A detailed report of each reportable accident shall be made by the motor carrier on Form MTD 25 in duplicate. The original of such report shall be mailed as soon as possible after the occurrence of an accident, but in any event within 15 days, to the Director, Motor Transport Division, Columbia, South Carolina. The duplicate shall be retained in the files of the motor carrier.

Note: Copy of I. C. C. Accident Report (Form BMC50) or copy of State Highway Department Accident Reports (Form 300) will be accepted as compliance herewith.

4.4 Fatal accidents.

4.41 Immediate Notice When Death Occurs.—Whenever any accident results in the death of any person, at the time of the accident or within 24 hours thereafter, the motor carrier shall immediately transmit notice of such death by telegraph or telephone to the director as indicated in Rule 4.3. Such notice shall contain information as to the date and time of the accident, the exact location, the type of motor carrier's vehicle involved, the number of persons killed and injured, and the name and address of the motor carrier.

4.42 Deaths Occurring Before Filing MTD 25 Report.—In addition to the requirements of Rule 4.41, all deaths shall be reported on Form MTD 25 whether they occur at the time of the accident or subsequently if such deaths occur prior to the filing of said accident report form.

4.43 Deaths Occurring After Filing MTD 25 Report.—Whenever the death of any person results from an accident after the motor carrier has submitted his Form MTD 25 report of such accident to the director, notice of such death in writing shall be given to the director as soon as possible after such death is known to the motor carrier, with sufficient information to identify the accident from which the death resulted.

4.5 Carrier to assist in investigation.

Every motor carrier shall make available to the duly authorized representative or representatives of the Commission all records and information which in any way pertain to any reportable accident, and shall afford all reasonable assistance in the investigation of any such accident.

4.6 Obtaining of accident report form (MTD 25).

For the purpose of compliance with these rules, every motor carrier shall keep on hand an adequate supply of Accident Report Forms MTD 25 to enable prompt reporting of accidents. Supplies of this form may be obtained from the Motor Transport Division, Public Service Commission, Columbia, South Carolina.

PART 5

HOURS OF SERVICE OF DRIVERS

Regulations Effective January 1, 1941

Rule 1. As used in these regulations:

(a) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used upon the highways for compensation in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails.

(b) The term "driver" means any individual who drives any motor vehicle as defined in paragraph (a) above.

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(c) A driver is on duty from the time he begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. Time spent by a driver resting or sleeping in a berth as defined in paragraph (g) of this rule shall not be included in computing time on duty.

(d) The term "drive or operate" includes all time spent on a moving vehicle and any interval not in excess of 10 minutes in which a driver is on duty but not on a moving vehicle. It does not include time spent resting or sleeping in a berth as defined in paragraph (g) of this rule.

(e) The term "week" means any period of 168 consecutive hours beginning at the time the driver reports for duty, as defined in paragraph (c) of this rule.

(f) The term "24 consecutive hours" means any such period starting at the time the driver reports for duty, as defined in paragraph (c) of this rule.

(g) The term "berth" means a berth or bunk on the motor vehicle which is properly equipped for the purpose of sleeping, including springs and mattress, or an inner-spring mattress, pillow, adequate bed clothing, adequate ventilation, and ready means of entering and leaving the berth.

(h) Where any other terms used in these regulations are defined in the Motor Vehicle Carrier law, such definitions shall be controlling. Where terms are used in the regulations which are neither defined herein nor in said law, they shall have the ordinary practical meaning of such terms.

Rule 2. Every motor carrier and his or its officers, agents, employees, and representatives shall comply with the following regulations, and every such motor carrier shall require that his or its officers, agents, employees, and representatives shall be conversant with these regulations.

Rule 3. No carrier subject to these regulations shall permit or require any driver in his employ to remain on duty, as defined in paragraph (c) of rule 1, for a total of more than 60 hours in any week, as defined in paragraph (e) of rule 1; provided, however, that carriers operating vehicles on every day of the week may permit drivers in their employ to remain on duty for a total of not more than 70 hours in any period of 192 consecutive hours.

(b) Except under conditions set forth in rule 6 (a) and (b) hereof, no carrier subject to these regulations shall permit or require a driver in his employ to drive or operate for more than 10 hours in the aggregate in any period of 24 consecutive hours, unless such driver be off duty for 8 consecutive hours during or immediately following the 10 hours aggregate driving and within said period of 24 consecutive hours; provided, however, that two periods of resting or sleeping in a berth, as defined in paragraph (g) of rule 1, may be cumulated to give the aforesaid total of 8 hours off duty.

Rule 4. No carrier subject to these regulations if himself a driver shall remain on duty or drive for longer periods than those prescribed in Rule 3 hereof for employed drivers.

Rule 5. (a) Each carrier subject to these regulations shall require that a driver's log in duplicate shall be kept by every driver in his employ who operates a motor vehicle engaged in transportation for compensation, and, if himself an owner-driver, shall keep such a log. Entries in said driver's log shall be made by the driver, and shall show the place of origin and destination of the trip, the times of reporting for duty and of going off duty, the periods of driving or operating and other work, and any other information found desirable; provided, however, that the foregoing provisions of this rule shall not apply to drivers engaged in the transportation of passengers or property for compensation wholly within a municipality.

Note: If Interstate Commerce Commission required Driver's Daily Log is kept as required it will be accepted as compliance herewith.

(b) Each carrier shall make monthly reports to the Motor Transport Division, Public Service Commission, Columbia, South Carolina, prior to the fifteenth day of each succeeding month, of every instance where a driver has been required or permitted to be on duty or to drive or operate for hours in excess of those prescribed by these regulations, and shall fully explain the reasons for and circumstances surrounding such violations. Such reports shall be in writing and sworn to.

Note: Copy of Interstate Commerce Commission Monthly Report of Hours of Service (Excess Hours Only)—(Form 2) will be accepted as compliance herewith.

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Rule 6. (a) In case of snow, sleet, fog, or other adverse weather conditions, or in case the highways are covered with snow or ice, or presence of unusual adverse road and traffic conditions, a driver may be permitted and required to drive or operate a motor vehicle for not more than 12 hours in the aggregate in any period of 24 consecutive hours in order to complete his run, without being off duty for a period of 8 consecutive hours as provided by rule 3, and this longer period of driving is permitted even though conditions named herein are known to the employer before the trip is begun.

Note: Copy of Interstate Commerce Commission Carriers Monthly Report of Excess Hours (Form 3) will be accepted as compliance herewith.

(b) If a driver is permitted or required under the provisions of subdivision (a) of this rule to drive in excess of 10 hours in the aggregate in any 24-hour period without being off duty for a period of 8 consecutive hours during or immediately following the period of 10 hours driving and within said period of 24 consecutive hours, a report must be made immediately to the Commission, and such report shall contain a full and correct statement of the conditions which necessitated the longer period of driving.

Note: Copy of Report on Driving Hours (Rule 6(b)—Form 4) will be accepted as compliance herewith.

(c) In case of any emergency a driver may complete his run without being in violation of the provisions of these regulations, if such run could reasonably have been completed without such violation.

Rule 7. These regulations shall not apply to any carrier subject thereto when transporting passengers or property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic pestilence, or other calamitous visitation or disaster.

INSTRUCTIONS FOR USE OF DRIVER'S LOG.

Note.—Originals of logs shall be forwarded daily to the driver's home terminal and be retained for a period of one year. Drivers shall hold duplicate copies in their possession for a period of one month.

Drivers' logs are personal records to be kept with the individual drivers during their entire duty period. The logs are not vehicle records.

The spaces at the top of the log herein prescribed may be filled in by an authorized official of the carrier except those reserved for "driver's signature" and for entry of the total mileage for the current day.

The purpose of the driver's log is to show in graph form the activities of the driver by calendar days. Spaces are provided on the log, under appropriate headings, for making the necessary entries by drawing penciled lines.

Section 1. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods during the calendar day in which the driver is relieved from work and all responsibility for performing work, except time spent in a properly equipped sleeping berth.

Section 2. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods spent resting or sleeping in a properly equipped sleeping berth.

Section 3. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods during which driving or operating was done. This is to include any incidental pick-up and delivery stops, intermediate stops for taking on or discharging passengers, inspection of vehicle, loading or unloading, or other periods of duty, on or off the vehicle, which are not in excess of 10 minutes.

Drivers shall note in Section 9 the specific condition or conditions which necessitated driving or operating in excess of 10 hours in the aggregate as prescribed in rule 3(b).

Section 4. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods during which the driver may have been riding in any part of the motor vehicle but not at the wheel and not in a properly equipped sleeping berth, but including any incidental stops or other periods of duty, on or off the vehicle, not in excess of 10 minutes occurring while a "rider".

Note.—If a driver is "deadheading", he shall specify by writing the word "deadhead" through the appropriate hours.

Section 5. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods during which time was spent loading, unloading, handling freight, preparing reports, preparing the vehicle for service, etc., in excess of 10 minutes.

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(Form of Driver's Daily Log)

Form 1 Public Service Commission DATE (Month) (Day) (Year) Name of Motor Carrier Main office address Home terminal Driver's signature Carrier Safety Regulations Company Accounting No. Mileage (Today's) TOTAL HOURS DRIVER'S DAILY LOG ONE CALENDAR DAY ONLY No motor vehicle shall be driven by any driver while his ability or alertness is so impaired through fatigue, illness, or any other cause as to make it unsafe for him to drive or to continue to drive a motor vehicle. (Motor Carrier Safety Regulations)											
Mid	1	2	3	4	5	6	7	8	9	10	11
1	OFF DUTY - ALL TIME OFF DUTY, EXCEPT TIME SPENT IN SLEEPING BERTH.										
2	OFF DUTY - TIME SPENT IN SLEEPING BERTH.										
3	DRIVING OR OPERATING - INCLUDING INCIDENTAL STOPS NOT IN EXCESS OF 10 MINUTES.										
4	RIDING - NOT IN SLEEPING BERTH, BUT INCLUDING INCIDENTAL STOPS NOT IN EXCESS OF 10 MINUTES. (SPECIFY IF DEADHEADING)										
5	ON DUTY - LOADING, UNLOADING, MAKING OUT REPORTS, ETC.										
6	ON DUTY - INCIDENTAL STOPS FOR MEALS, COFFEE, GAS, ETC.										
7	ON DUTY - WAITING FOR WORK, OR TO BE RELEASED FROM WORK, OR FOR LOADING, OR UNLOADING, ETC.										
8	ON DUTY - EMERGENCIES AS PROVIDED FOR IN RULE 6(c) (EXPLAIN)										
9	SUMMARY OFF DUTY DRIVING OTHER DUTY ENTER THE NAME OF THE PLACE WHERE YOU MAKE EACH CHANGE SHOW THE TIME AT WHICH YOU CROSS ANY STATE LINE USE THE STANDARD OF DRIVER'S HOME TERMINAL • If in excess of 10 minutes; otherwise include under 3 or 4. Origin Final destination For REMARKS - Use reverse side of sheet										

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Section 6. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods for all incidental stops, such as comfort stops, meals, gas, coffee, etc., in excess of 10 minutes.

Section 7. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods during which the driver is not released from work or all responsibility for performing work but is required to wait for work, or loads, or connections, or to be released from work, in excess of 10 minutes.

Section 8. Indicate in this section, by drawing a line between the appropriate time markers, the elapsed period or periods during which the driver may be delayed by emergencies, as provided in rule 6(c).

Section 9. Indicate in this section, by an appropriate "check" and written notation, the time and the place where each change of operation occurred.

Example: If a driver ceases the driving of his vehicle to begin a period of unloading for more than 10 minutes, a "check" should be made at the appropriate time to show that this change of operation occurred, with a brief note as to the place of change. Also indicate by a "check" and written notation at the appropriate time marker, the time at which a State line is crossed.

Example: When a driver crosses a State line at 6:00 p. m., he should so note by making a "check" opposite the time marker for that hour and insert the abbreviations of the States in question as: "Maryland to Delaware," written "Md. to Del."

The time standard used in making up this log shall be the time used at the *driver's home terminal*.

In the lower right-hand corner under the title SUMMARY enter on the first line, OFF DUTY, the sum of the hours shown in Sections 1 and 2.

On the next line, DRIVING, enter the sum of the hours shown in Sections 3 and 4.

On the last line, OTHER DUTY, enter the sum of the hours shown in Sections 5, 6, 7, and 8.

The sum of these entries should equal 24 hours.

The spaces marked ORIGIN and DESTINATION are to be filled in only where the total one-way trip involves more than one calendar day.

Where the driver wishes to make remarks in explanation of any phase of the day's work, he may, except as indicated above, use the reverse side of the form, as noted in the lower right hand corner of the driver's log.

NOTE CAREFULLY.—DRIVERS AND CARRIERS WILL BE HELD RESPONSIBLE FOR THE PROPER MAINTENANCE OF THE DAILY LOGS. FAILURE TO MAINTAIN THESE LOGS THROUGHOUT THE DAILY OPERATION OR FAILURE TO FILL OUT ANY APPLICABLE PART OF THESE FORMS WILL MAKE THE DRIVER AND CARRIER LIABLE TO PENALTY.

NOTE.—The commission will not provide supplies of the low. In reproducing the log, all dimensions shown on the accompanying form shall be preserved, except that, if a carrier prefers, over-all dimensions of 7 x 10.5 inches may be used. For the convenience of the carriers, this log may be incorporated as a part of any daily form that the carrier may now be using or that may be adopted in the future.

(Forms 2, 3, and 4 may be typed, mimeographed, or printed. Paper of letterhead size should be used.)

RULES AND REGULATIONS

Form 2.

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA MOTOR TRANSPORT DIVISION COLUMBIA, S. C.

Report for month of 19....
HOURS OF SERVICE REPORT
(For use in reporting Excess Hours only)

.....
(Name of Carrier)

.....
(Address)

TO THE MOTOR TRANSPORT DIVISION PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

.....
(Name, title, and address of person sending this report.)

OATH

State of }
County of } ss:
Town of }

....., being duly sworn, deposes and says that this recapitulation and the sheets annexed hereto constitute a full and true report, according to his best knowledge, information, and belief, of all hours of the drivers of the said carrier, or of the carrier himself if an owner-driver, in excess of those permitted in rule 3 (a), and rule 3 (b), except as permitted in rule 6 (a), for the month of 19...., together with the reasons for and circumstances surrounding such excess hours, and further that all drivers in the employ of the said carrier, or the carrier himself, if an owner-driver, have filed properly executed driver's daily logs; and that these statements are made in compliance with the Hours of Service Regulations (Rule 5, effective January 1, 1941.)

SUBSCRIBED AND SWORN TO before me this day of
..... 19....

.....
Notary Public for State of

Total number of drivers on pay roll during month	Total
Regular	
Relief	
Extra	
Total	

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA MOTOR TRANSPORT DIVISION COLUMBIA, S. C.

Form 3

CARRIER'S MONTHLY REPORT OF EXCESS HOURS (One form required for each driver working excess hours)

Month of
Year

Name of carrier Address
Driver
Driver's home terminal

EXCESS DAILY HOURS

Enter check against proper date in each instance in which a driver drove or operated a motor vehicle for more than 10 hours in the aggregate in any period of 24 consecutive hours without 8 consecutive hours off duty during or immediately following the 10 hours aggregate driving and within such period of 24 consecutive hours, except that instances in which hours of driving in excess of 10, but not in excess of 12, occur by reason of permission given under Rule 6 (a), shall be reported on Form 4.

Form 1

Form Prescribed by the
INTERSTATE COMMERCE COMMISSION
Public Service Commission

DATE MARCH 1, 1939 (Month) 1939 (Year)

X.Y.Z. Transportation Co.
Name of Motor Carrier
Washington, D.C.
Main office address

Original - File at home terminal for 1 year
Duplicate - Driver to keep for 1 month

000
Company Accounting No.

Mileage 161
(today's)

Driver's signature J. Doe
Home terminal Baltimore, Md

No motor vehicle shall be driven by any driver while his ability or alertness is so impaired through fatigue, illness, or any other cause as to make it unsafe for him to drive or to continue to drive a motor vehicle. (Motor Carrier Safety Regulations)

Mile	1	2	3	4	5	6	7	8	9	10	11	12	TOTAL HOURS
1	OFF DUTY - ALL TIME OFF DUTY, EXCEPT TIME SPENT IN SLEEPING BERTH.												12 1/2
2	OFF DUTY - TIME SPENT IN SLEEPING BERTH.												-
3	DRIVING OR OPERATING - INCLUDING INCIDENTAL STOPS NOT IN EXCESS OF 10 MINUTES.												7 1/4
4	RIDING - NOT IN SLEEPING BERTH, BUT INCLUDING INCIDENTAL STOPS NOT IN EXCESS OF 10 MINUTES. (SPECIFY IF DEADHEADING)												-
5	ON DUTY - LOADING, UNLOADING, MAKING OUT REPORTS, ETC.												2 1/2
6	ON DUTY - INCIDENTAL STOPS FOR MEALS, COFFEE, GAS, ETC.												1
7	ON DUTY - WAITING FOR WORK, OR TO BE RELEASED FROM WORK, OR FOR LOADING, OR UNLOADING, ETC.												3/4
8	ON DUTY - EMERGENCIES AS PROVIDED FOR IN RULE 6(c) (EXPLAIN)												-
9	ENTER THE NAME OF THE PLACE WHERE YOU MAKE EACH CHANGE SHOW THE TIME AT WHICH YOU CROSS ANY STATE LINE USE THE STANDARD OF DRIVER'S HOME TERMINAL <u>Wash. D.C.</u> <u>W.C. to Md.</u> <u>1/2 mile to</u> <u>Dist. Md.</u> <u>Home & Gary, Md.</u> <u>Young coming</u> <u>Md. to Wash.</u> <u>Cause, Md.</u>												SUMMARY OFF DUTY <u>12 1/2</u> DRIVING <u>7 1/4</u> ON DUTY <u>4 1/4</u> OTHER <u>1 1/4</u>
Origin <u>Washington, D.C.</u> Final destination <u>Baltimore, Md.</u> For REMARKS - Use reverse side of sheet													

RULES AND REGULATIONS

2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30	31								

EXCESS WEEKLY HOURS

This driver was on duty in excess of 60 hours in one or more periods of 168 consecutive hours as follows:

	<i>Begin</i>	<i>End</i>	<i>Begin</i>	<i>End</i>	<i>Begin</i>	<i>End</i>	<i>Begin</i>	<i>End</i>
Date								
Hour	-a.m.	a.m.	-a.m.	a.m.	-a.m.	a.m.	-a.m.	a.m.
Hour	-p.m.	p.m.	-p.m.	p.m.	-p.m.	p.m.	-p.m.	p.m.
Excess in period								

State of circumstances surrounding excess hours. (NOTE.—Identify by dates as given in tabulation above):

.....

.....

NOTE.—Carriers subject to the 70-hour provision of rule 3 shall report on the basis of the excess occurring in one or more periods of 192 consecutive hours.

Method of Using Driver's Log

The accompanying example shows how a driver's log is made out. The driver in this instance reports for duty at Washington, D. C., at 6 a. m., waits 30 minutes for work, loads for 1 hour, then drives or operates 2 hours, reaching Baltimore, Md., at 9:30 a. m., where he stops 30 minutes for gas and coffee; he then drives 2½ hours, reaching Havre de Grace, Md., where he stops 30 minutes for lunch; from there he drives 2 hours, spends 15 minutes on ferry, and reaches Camden, N. J., at 4 p. m. After unloading for 1½ hours, he goes off duty for the rest of the calendar day. In section 9, crossings of State lines are indicated by checks and abbreviations of the names of the States at 7:45 a. m., 2:30 p. m., and about 3:15 p. m. A stop of 5 minutes, from 8:30 to 8:35 a. m., to deliver lading at Loral, Md., is included as driving or operating, as the period is less than 10 minutes. A stop of 15 minutes, from 3 to 3.15 p. m., while crossing on a ferry is shown in appropriate "on duty" section.

This day's log covers the first leg of a trip from Washington, D. C., to Boston, Mass.; the origin and final destination are shown at the bottom of the log because the trip will take more than 1 day to complete. The totals in the right-hand column show 12½ hours off duty, 2½ hours loading or unloading, 7½ hours driving or operating, 1 hour spent in meal or similar stops, and 45 minutes waiting for work. These amounts are gathered together in the lower right-hand corner to give 12½ hours off duty 7½ hours driving or operating, and 4½ hours other duty, a total of 24 hours.

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA MOTOR TRANSPORT DIVISION COLUMBIA, S. C.

REPORT ON DRIVING HOURS

Form 4

(Rule 6 (b))

INSTRUCTIONS:

This form is to be used only in instances in which use is made of rule 6 (a); that is, when driving in excess of 10 hours but not in excess of 12 hours occurs without the driver being off duty for 8 consecutive hours during or immediately following the 10-hour period. It is to be mailed within 48 hours after the close of any day on which such run is completed to the Motor Transport Division, Columbia, South Carolina. The facts shall be clearly and accurately stated.

If hours of driving exceed the daily limitation prescribed by rule 3 (b) or those permitted by rule 6 (a), or if hours on duty exceed those prescribed by rule 3 (a), the report of such excess hours shall be made on forms 2 and 3 instead of form 4.

CODE OF LAWS OF SOUTH CAROLINA

Name of carrier
 Address of carrier (city only)
 Date of report

Name of driver	Description of run				Total driving time (hours and minutes)	Conditions which necessitated use of rule 6(a) (Describe specifically)
	Run began at		Run ended at			
	Place	Date and Hour	Place	Date and Hour		

PART 6

INSPECTION AND MAINTENANCE

6.1. Compliance required.

Every motor carrier shall comply with Rules 6.1 to 6.7, inclusive, with respect to all operations other than drive-away operations.

6.2. Inspection and maintenance required.

Every motor vehicle shall be maintained in safe operating condition and sufficient frequency of inspection shall be made to determine compliance with this rule.

6.3. Remedy or repair to be made.

Any defect or deficiency revealed by inspection as likely to cause a serious hazard to persons or property by the operation of any motor vehicle shall be remedied or repaired before the motor vehicle is continued in, or returned to, service.

6.4. Damaged vehicles to be inspected.

No motor vehicle, any part of which shall have been damaged by accident or other cause, shall thereafter be continued in or returned to service until inspection shall have been made to ascertain the nature and extent of the damage.

6.5. Lubrication required.

All rubbing or moving parts, including bearings, journals, pins, joints, and other parts for which lubrication is required, shall be kept lubricated in accordance with sound practice.

6.6. Driver's trip report.

Every driver employed by a motor carrier shall at the end of his day's work or tour of duty report in writing to his employer any such defect or deficiency of the motor vehicle discovered by him during such day's work or tour of duty as would be likely to affect the safety of operation of that vehicle.

6.7. Inspection of drive-away operations.

Every motor carrier with respect to motor vehicles in drive-away operations shall comply with the following Rules (6.71 and 6.72), in addition to the requirements set forth in Rules 6.3 and 6.4.

6.71 Inspection Before Beginning Trip.—Before the beginning of any drive-away opera-

RULES AND REGULATIONS

tion of motor vehicles in combination, inspection shall be made to ascertain that the tow-bar or saddle-mount connections are secured to the towed and towing vehicles, that they function adequately without cramping or binding of any of the parts, and that the towed motor vehicle follows substantially in the path of the towing vehicle without whipping or swerving.

6.72 Inspection Following Trip.—Following the completion of any trip in a drive-away operation of motor vehicles in combination, and before their use again, the tow-bar or saddle-mount connections shall be disassembled and inspected for worn, bent, cracked, broken, or missing parts. Suitable repair or replacement shall be made of any such parts, and the connections properly reassembled.

RECOMMENDED PRACTICES

(Not compulsory requirements)

The following practices are recommended to motor carriers for consideration as one means of establishing sound inspection and maintenance procedure:

Driver's Trip Report

As a convenient means of providing for a driver's trip report required by Rule 6.6, the following form of "defect card" or list is suggested:

DRIVER'S TRIP REPORT

Driver's Name
Vehicle No. Date.....

Item

Note Defect

Body
Brakes
Cooling System
Drive line
Emergency Equipment
Engine
Exhaust
Fuel System
Glass
Horn
Leaks
Lights (state which)
Load
Reflectors
Speedometer
Springs
Steering
Tires
Wheels
Windshield wiper
Any other items requiring attention:
.....
.....

The items listed above may be modified or added to, as desired by the carrier.

CODE OF LAWS OF SOUTH CAROLINA

DAILY OR WEEKLY INSPECTION

It is recommended that every motor vehicle be inspected, visually or by test, not less often than once every week and preferably every day, to ascertain that it is in safe operating condition so far as may be determined by such an inspection.

There should be no such wet spots under the vehicle as would indicate leaks in the fuel system or other parts of the vehicle.

No parts of the body, mirrors, lights, reflectors, chassis springs, steering mechanism, wheels and hub or rim nuts, windows or windshield should be bent, broken, misaligned, or missing.

The tires should be adequately inflated, without any bulges, blisters, cuts or other indications of weakness.

No parts of the body, brakes, fuel system, lights, chassis springs, wires, or other units should be sagging or hanging free below the vehicle.

Performance of the brakes, both service and hand, horn, headlights, steering mechanism, and windshield wiper should be ascertained by trial to be adequate.

All filaments of all lighting devices should burn white when the generator is operating.

Wiring Inspection

It is recommended that not less often than once every 6 months, and preferably at more frequent intervals, all electrical wiring and connections on every motor vehicle should be inspected to ascertain that they are well secured in place, free of open or short circuits, and free from abrasions, cuts, or mechanical defects, such as would be likely to produce open or short circuits.

It is further recommended that the voltage at any lamp bulb or at the terminals of any other electrical device be not less than 5 volts in a nominal 6-volt electrical system, and not less than 10 volts in a nominal 12-volt electrical system.

Periodic Inspection

It is recommended that every motor vehicle be periodically inspected in accordance with the recommendations of its manufacturer.

Private contract carriers were not entitled to attack this section as unconstitutional where Commission had not exercised any of the powers granted as to them. *State ex rel. v. Hicklin*, 168 S. C. 440, 167 S. E. 674.

MOTOR VEHICLES TRANSPORTING PERSONS OR PROPERTY

Pursuant to § 58-1461, S. C. Code of 1952.

(Filed Secretary of State's office December 31, 1940, except as otherwise noted.)

These rules and regulations shall be observed by all carriers subject to the Motor Vehicle Carriers Law, §§ 58-1401 to 58-1661, S. C. Code of 1952.

SECTION 1. Definitions

Rule 1. The term "Motor Vehicle Carriers' Law" means Chapter 13, Title 58, §§ 58-1401 to 58-1661.

Rule 2. The term "State" means the State of South Carolina.

Rule 3. The term "Commission" means the Public Service Commission of South Carolina.

Rule 4. The term "Corporation" means a corporation, company, association, or joint stock association.

Rule 5. The term "person" means an individual, a firm or a copartnership.

Rule 6. The term "Motor vehicle carrier" means every corporation, or, person, their lessees, trustees or receivers, owning, controlling, operating, or managing any motor-propelled vehicles not usually operated on or over rails used in the business of transporting persons or property for compensation over any improved public highway or streets as hereinafter defined, in this State.

RULES AND REGULATIONS

Rule 7. The term "contract hauling", as used in Section 8510, is construed to mean the hauling of freight or property by means of motor vehicles over the public highways of this State for compensation outside the incorporated limits of cities or towns, under special contract made by a contract carrier as hereinafter defined, with a single patron or shipper, not upon regular schedule or over regular route; the same to be a solid vehicle load movement for one shipper or patron only at any one time and no further patronage to be received from any other patron until entire cargo already received is delivered.

Rule 8. The term "contract carrier" means any person, firm or corporation engaged in the business of contract hauling of freight or property for compensation upon the highways of this State under special arrangement made by contract with the patron or shipper, and who does not propose to operate upon a regular schedule or over a regular route, or to haul for more than one shipper or patron at any one time, and who will not solicit or receive any further patronage for that trip until the entire cargo received from such shipper has been delivered.

Rule 9. The term "solicit or receive patronage along the route" as used in Section 8510, means the asking for, or receiving of, any freight from any other patron after the one shipment is loaded until entire load is delivered; and no motor vehicle carrier operating under Certificate F shall have the right to receive any further patronage, after one shipment is received, for transportation on that vehicle until such shipment is delivered.

Rule 10. The term "carrying capacity", as used in §§ 58-1437 to 58-1439 in relation to Class D, E, and F Certificate holders, means the actual carrying capacity of the vehicles to be operated under such certificates, with, however, a thirty per cent, overload allowance as provided in Section 2 of Act No. 960 of the Acts of 1938.

Rule 11. The term "Certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of the Motor Vehicle Carriers' Law as hereinbefore defined.

Rule 12. The term "Class A Certificate holder" means a motor vehicle carrier of passengers over regular routes and upon regular schedules as filed with and approved by the Commission, and commonly known as a common carrier.

Rule 13. The term "Class B Certificate holder" means a motor vehicle carrier of passengers over regular routes but not upon regular schedule.

Rule 14. The term "Class C Certificate holder" means a motor vehicle carrier of passengers not over regular routes or upon regular schedules, and who does not in any way solicit patronage outside of a radius of two miles of the corporate limits of the city in which he is licensed to do business, except upon such highways as are not served by a holder of Class A or B Certificate, and who does not solicit or receive patronage along the route outside of such two-mile radius.

Rule 15. The term "Class D Certificate holder" means a motor vehicle carrier of property over regular routes and upon regular schedules as filed with and approved by the Commission, commonly known as a common carrier. (See Rule No. 20.)

Rule 16. The term "Class E Certificate Holder" means a motor vehicle carrier of property not upon any particular route or schedule, and who is commonly known as an irregular route common carrier. (Filed Secretary of State's office January 15, 1945.)

Rule 17. The term "Class F Certificate holder" means a motor vehicle carrier of property under contract as filed with and approved by the Commission, and limited to not more than three such contracts, and who will operate over irregular routes upon irregular schedules, and who will not solicit or receive patronage along the route. (See Rules 7, 8 and 9.)

Rule 18. The term "public highway" when used herein, means every road or highway in the State which is, or may hereafter be declared to be, a part of the State Highway System or any county highway system, or the streets of any city or town.

Rule 19. The proviso under Section 8508, providing that nothing contained in said section shall apply to farmers or dairymen hauling dairy or farm products is construed

to mean that nothing in the said section shall apply to farmers or dairymen hauling their own dairy or farm products, or to farmers and dairymen who occasionally, but do not regularly as a part of an established business, haul farm and/or dairy products for others for hire, but that persons who may also be engaged in part in farming operation but who make a regular business of transporting farm and/or dairy or other products for others for hire are not to be deemed farmers or dairymen for the purpose of this law, and, hence, are required to comply with this chapter of the Code in all respects like other persons engaged in motor transportation for hire.

Rule 20. The provision of Section 8510 of the Code that "the Commission shall have power to grant a Certificate D for property carrying vehicles which will operate upon regular routes and schedules," insofar as it relates to the term "regular schedules" is construed to mean that where motor freight operators operate between fixed termini daily or upon fixed days, but who may not leave the termini at the same time daily nor at the same time upon such fixed days, they are to be deemed operating upon regular schedule for the purpose of this chapter of the Code, and, hence, are required to comply with it in all respects like other persons engaged in motor transportation of freight for hire over regular routes on regular schedules.

SECTION 2. Application for Certificates

Rule 21. Motor vehicle carriers desiring to operate in this State shall file with the Commission on forms to be furnished by the Commission application for a certificate of public convenience and necessity so to do.

Rule 22. Application for Class A Certificates shall be accompanied by:

(a) One copy of tariff naming rates and fares with rules and regulations governing same on forms to be furnished or approved by the Commission.

(b) One copy of time schedule on forms to be furnished or approved by the Commission.

(c) One copy of proposed route in detail over highways, roads, and streets on forms to be furnished by the Commission.

(d) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

Rule 23. Application for Class B Certificates shall be accompanied by:

(a) One copy of tariff naming rates and fares with rules and regulations governing same on forms to be furnished or approved by the Commission.

(b) One copy of proposed route or routes in detail over highways, roads and streets on forms to be furnished by the Commission.

(c) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

Rule 24. Applications for Class C Certificates shall be accompanied by:

(a) One copy of tariff naming rates and fares with rules and regulations governing same on forms to be furnished or approved by the Commission.

(b) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

Rule 25. Application for Class D Certificates shall be accompanied by:

(a) One copy of proposed rates, together with rules and regulations governing same. See Order No. 2527.

(b) One copy of time schedules on forms to be furnished or approved by the Commission.

(c) One copy of proposed route in detail over highways, roads and streets on forms to be furnished by the Commission.

(d) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

Rule 26. Applications for Class E Certificates shall be accompanied by:

(a) One copy of proposed rates together with rules and regulations governing same. See Order No. 2527.

(b) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

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Rule 27. Applications for Class F Certificates shall be accompanied by:

(a) One copy of proposed rates together with rules and regulations governing the same. See Order No. 2527.

(b) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

Rule 28. All exhibits or papers submitted must be plainly written on one side of the paper only, size of paper to be not smaller than $8\frac{1}{2}$ x 11 inches, and the same shall be considered a part of the application.

Rule 29. Application for Class A, B, or D Certificate shall be accompanied by a certified check in the amount of \$50.00 payable to the Commission to guarantee, first, the applicant's appearance at the public hearing to be held in connection with his application, and to guarantee the inauguration of satisfactory service in the event such application is approved, check to be forfeited in the event either of these requirements is not complied with; otherwise, the amount of such check to be returned to the applicant.

Rule 30. Applicants for Class A, B, or D Certificates of Public Convenience and Necessity shall have notice of hearing on such applications published in one newspaper of each county into or through which the proposed service would operate at least fifteen days before the date of such hearing, such notice to be in the form of the Commission's notice of such hearing to affected parties, and the affidavit of the publisher of such newspaper giving date of publication of notice shall be filed with the Commission by the applicant at the beginning of such hearing or prior thereto.

Rule 31. No service shall be inaugurated under Certificates as issued by the Commission within thirty days after the granting of such Certificates unless there shall have been no objection to the granting of such Certificate at the hearing held thereon. In the event there is no objection to the granting of the Certificate the service shall be inaugurated within thirty days after the granting of such Certificate or the holder thereof shall show good and sufficient cause to the Commission why the same is not done; otherwise, the Certificate shall be revoked. (Filed Secretary of State's office May 25, 1950.)

SECTION 3. Certificates and Annual Reports

Rule 32. Certificates of public convenience and necessity will not be issued to two or more persons operating under a trade name, unless organized in a manner that will definitely fix responsibility.

Rule 33. Any certificate to operate a motor propelled vehicle for the transportation of persons or property, either or both, for compensation, obtained upon any application by any false affidavit or representation shall be subject to revocation and cancellation by the Commission.

Rule 34. Every motor vehicle carrier shall submit at the time of obtaining license on forms to be prescribed and furnished by the Commission, a list of all equipment to be used under their certificate during the ensuing year, or portion thereof, including substitute, or reserve equipment.

Rule 35. Every motor vehicle carrier, shall keep on file in its main office, subject to inspection by the Commission, a daily record of all vehicles used, including vehicles substituted, showing:

1. Complete description of each vehicle used.
2. Number of trips and to what points each of said vehicles were operated.

Rule 36. Every motor vehicle carrier shall file with the Commission on or before March 31st of each year on forms prescribed and furnished by the Commission an annual report for the preceding calendar year.

Rule 37. No certificate or rights thereunder shall be sold, assigned, leased, transferred, mortgaged, pledged or hypothecated unless first authorized by the Commission. Application for such sale, assignment, lease, transfer, mortgage, pledge, or hypothecation must be made on forms prescribed and furnished by the Commission.

Regulation valid.—This regulation of the Commission is well within the legislative contemplation of the powers to be exercised by the Public Service Commission in matters of the present character. *Beard-Laney, Inc. v. Darby*, 213 S. C. 380, 49 S. E. (2d) 564 (1948).

The Commission has the power to transfer a certificate of public convenience and necessity of a motor carrier pursuant to the

regulations adopted by such Commission whenever in its opinion this course would be in the public interest. *Beard-Laney, Inc. v. Darby*, 213 S. C. 380, 49 S. E. (2d) 564 (1948).

But it has no authority to disapprove a transfer on the ground that such transfer would cause a violation of the anti-trust laws. *Beard-Laney, Inc. v. Darby*, 213 S. C. 380, 49 S. E. (2d) 564 (1948).

Rule 38. In case of change of ownership or control of the motor vehicle carrier's property facilities and services of any motor vehicle carrier or when its name is changed, the individual, firm, association or corporation which takes over such property and facilities, and which will thereafter perform such service, if it desires to use the time schedules, time tables, distance tables and tariffs of the former owner, shall in addition to complying with the provisions of Rule 37 of the rules, file with the Commission and post in its principal office and at each station or regular stopping place along its route an adoption notice in substantially the following form, size of paper to be not smaller than 8½ x 11 inches:

ADOPTION NOTICE

..... hereby adopts,
ratifies, and makes own in every respect as if the
same had been originally filed and posted
all tariffs and supplements thereto, time schedules and supplements, provisions authorized,
powers of attorney, or other instruments whatsoever filed with the Commission by
....., whose certificate of public convenience and necessity No. Issued Effective
Issued by

Regulation valid.—This regulation of the Commission is well within the legislative contemplation of the powers to be exercised by the Public Service Commission in mat-

ters of the present character. *Beard-Laney, Inc. v. Darby*, 213 S. C. 380, 49 S. E. (2d) 564 (1948).

SECTION 4. Tariff Naming Rates and Fares with Rules and Regulations

Passenger Tariffs

Rule 39. Copies of tariffs naming rates and fares to be charged, together with rules and regulations, if any, governing same shall be kept open for public inspection by every motor vehicle carrier at its principal office and at the terminus of each route or routes and at the principal station or stations thereon. Tariffs naming passenger rates must be posted in a conspicuous place in every motor vehicle and at places regularly used for loading and unloading along the line or route.

Rule 40. Passenger tariffs must contain fixed rules and regulations, if any, which govern the tariff in clear and explicit terms, setting forth:

1. All privileges of stop-overs, extension of time limit, restrictions outlined in certificate, refund for unused and partly used tickets, children's fares, baggage rules, excess baggage rates, etc.
2. Rates from or to intermediate points not named in tariff will be the same as the rates from or to the next more distant point named.
3. Full explanation of reference marks and technical abbreviations used in tariff.
4. Adult fares definitely and specifically stated in cents or dollars and cents per passenger, together with the names of the stations or stopping places from and to which they apply arranged in a simple and systematic manner.
5. Location of stopping point in each terminal municipality.
6. Commutation rates by ticket or otherwise if any.

Rule 41. No motor vehicle carrier, operating under a Class A Certificate as issued by the Commission shall enter into any inter-line ticket agreement whereby passengers may be transported over two or more lines with equal or greater distance for less than the established fare over the direct route or operation.

RULES AND REGULATIONS

Rule 42. The maximum minimum bus rates in South Carolina shall not exceed twenty cents for distances not exceeding eight miles. (Filed Secretary of State's office January 21, 1951.)

Rule 43. Changes in tariffs or any rule or regulation governing same must be as follows:

1. A new tariff must be issued bearing the next consecutive P. S. C. S. C. number and shall show reference to the tariff cancelled as follows: P. S. C. S. C. No. 2 cancels P. S. C. S. C. No. 1.

2. Tariff publications and supplements thereto (except temporary round trip excursion fares), must indicate increases and reductions made in existing rates, fares, rules or regulations by prefixing to same the following symbols:

I to indicate increases.

R to indicate reductions.

Clear explanation of these symbols must be shown in the tariff.

3. Two copies of such tariffs must be filed with the Commission and notice must be given to the public by posting copies in a conspicuous place at each station or stopping place affected at least thirty days before the effective date thereof.

4. After such thirty days' notice, the tariff will be considered in full force and effect unless ordered withdrawn, modified or suspended.

5. The Commission may, on its own motion or on the filing of a sufficient protest by any person or persons affected, order such tariff withdrawn, modified or suspended.

Rule 44. No motor vehicle carrier shall charge, demand, collect, or receive a greater or less, or different, compensation for the transportation of persons, or for any services in connection therewith, than the rates, fares and charges applicable to such motor vehicle carrier as specified in its tariffs filed and in effect at the time, nor shall any motor vehicle carrier refund or remit in any manner or by any device any portion of the rates, fares or charges so specified, except upon an order of permission from the Commission, nor extend to any corporation or person any privileges of facilities in the transportation of persons except such as are regularly and uniformly extended to all corporations and persons. Provided, motor bus operators in the State may grant to regularly ordained ministers of the gospel clergy rates over their lines.

Rule 45. No motor vehicle carrier shall pay any commission to any individual, firm, association or corporation, their lessees, trustees or receivers, for the sale of any ticket or fare unless upon contract or agreement in writing between the parties previously filed with and approved by the Commission.

Rule 46. Freight tariffs. (See Order No. 2527.)

SECTION 5. Time Schedules—Rules and Regulations

Rule 47. Time schedules must be made up as follows:

1. Time schedules must be numbered consecutively in the upper righthand corner, beginning with No. 1, and must show the number of the time schedule cancelled thereby, if any.

2. Name of the motor vehicle carrier. (If the motor vehicle carrier is not an incorporated company and a trade name is used, the names of the individuals composing such motor vehicle carrier must precede such trade name.)

3. The termini or points between which the time schedules apply briefly stated.

4. Date issued and date effective.

Rule 48. Time schedules must show:

1. The time of arrival and departure at and from all termini.

2. The time of departure from intermediate points between termini.

3. The distance between all points shown in the schedule.

4. Time schedule shall show what points, if any, on route of carrier at which service cannot be rendered and reason therefor.

Rule 49. At least one copy of such time schedule shall be posted in a conspicuous place, easily accessible for public inspection at each station or regular stopping place on the line or route, and a copy shall be in possession of each operator or driver,

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Rule 50. Time schedules filed with the Commission and posted for the information of the public must be adhered to.

Rule 51. Changes in time schedules effecting the time of arrival or departure of any motor vehicle at or from any station or stopping places on its line or route, or which will effect a reduction in the number of motor vehicle carriers operated over any scheduled line or route, or which will effect a reduction in the amount of passenger service rendered at any terminal, station or intermediate point must be made as follows:

1. A new time schedule must be issued bearing the next consecutive number and shall show reference to number of time schedule cancelled thereby as follows:

TIME SCHEDULE NO. 2 CANCELS TIME SCHEDULE NO. 1

2. Two copies of the proposed time schedule shall be filed with the Commission and notice given to the public by posting a copy in a conspicuous place in each station, and by publishing notice of such proposed change in at least one newspaper in each county, in, into, or through which the service will operate thirty days prior to the effective date of such change, and any objection to the said change in schedule shall be filed with the Commission fifteen days prior to the effective date of the said change.

3. After such thirty days' notice, such time schedule will be considered in full force and effect unless ordered withdrawn, modified, or suspended.

4. The Commission may, on its own motion, or on the filing of a sufficient protest of any person or persons affected, order such time schedule withdrawn, modified or suspended.

Rule 52. Time schedules as proposed by operators are approved by the Commission upon representation of the operators involved that the operation of such schedules may be made without violating the law or the State as to speed limits.

Rule 53. All interruptions of regular service where such interruptions are likely to continue for more than twenty-four hours shall be promptly reported in writing to the Commission and to the public along the route with full statement of the cause of such interruption and its probable duration.

Rule 54. Discontinuance of service for a period of three consecutive days without authority of the Commission may be deemed a forfeiture of all rights secured under and by virtue of any order or permission to operate issued by the Commission.

Rule 55. No motor vehicle carrier shall voluntarily discontinue the service called for under certificate and time schedule filed thereunder without first having given to the Commission and to the public at least ten days' notice, in writing, of the intention to discontinue such service and having secured from the Commission permission so to do.

SECTION 6. Insurance—Surety Bonds—C.O.D. Bonds

Rule 56. Every applicant for a certificate and license thereunder shall before such certificate and license are issued, and before any operation thereunder, file with the Commission public liability and property damage insurance policy or surety bond with a company authorized to do business in South Carolina covering each motor vehicle used or to be used by the applicant.

Rule 57. Each policy or bond issued under the provisions of Section 58-1481, Code of Laws of South Carolina, 1952, as amended, and this section, shall carry the following endorsement:

ENDORSEMENT FOR MOTOR VEHICLE CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY AND PROPERTY DAMAGE UNDER SECTION 58-1481, SOUTH CAROLINA CODE, 1952, AS AMENDED:

The policy to which this endorsement is attached is an automobile liability policy, and is hereby amended to assure compliance by the insured as a motor carrier of passengers or property with § 58-1481 of the South Carolina Code of 1952, as amended, and the Rules and Regulations of the Public Service Commission.

In consideration of the premium stated in the policy to which this endorsement is attached, the company hereby agrees to pay any final judgment recovered against the insured for bodily injury to or death of any person or loss of or damage to property of others (excluding injury to or death of Insured's employees while engaged in the

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course of their employment, and loss of or damage to property of the Insured, and property transported by the Insured designated as cargo), resulting from the negligent operation, maintenance, or use of motor vehicles under certificate of public convenience and necessity issued to the Insured by the Public Service Commission or otherwise under Sections 58-1411 to 58-1422 of the South Carolina Code of Laws, 1952, and amendments thereto, within the limits of liability hereinafter provided, regardless of whether such motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the Company to pay any such final judgment recovered against the Insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment. The bankruptcy or insolvency of the Insured shall not relieve the Company of any of its obligations hereunder.

The liability of the Company extends to such losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the Insured or elsewhere in the State of South Carolina.

The liability of the Company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder:

SCHEDULE OF LIMITS

Motor Carriers	Bodily Injury Liability		Property Damage Liability
(1) Kind of Equipment	(2) Limit for bodily injuries to or death of one person	(3) Limit for bodily injuries to or death of all per- sons injured or killed in any one accident (subject to a maximum of \$5,000 for bodily injuries to or death of one person)	(4) Limit for loss or damage in any one accident to property of others (excluding cargo)
Passenger equipment (seating capacity)			
Classes A and B, and Class C for vehicles with seating capacity of over 5 passengers:			
7 passengers or less	\$5,000	\$15,000	\$1,000
8 to 12 passengers, inclusive	5,000	20,000	1,000
13 to 20 passengers, inclusive	5,000	30,000	1,000
21 to 30 passengers, inclusive	5,000	40,000	1,000
31 passengers or more	5,000	50,000	1,000
Class C, not over 5 passengers	5,000	10,000	1,000
Freight equipment: (all motor vehicles used in the transportation of property:			
Classes D, E and F:	5,000	10,000	1,000

Nothing contained in the policy or any other endorsement thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon by the Insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment.

The Insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

This endorsement may not be canceled or its terms or conditions altered, amended or otherwise changed in any particular without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the Insured giving thirty (30) days' notice in writing to the Public Service Commission of South Carolina, at its office in Columbia, South Carolina, copy of such cancellation notice to be given to the Insured or the Company as the case may be, said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.

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Attached to and forming part of policy No. issued by the
 (herein called the Company)
 of to
 of
 Secretary President
 Attorney-in-Fact
 Dated and issued at this the
 of 19.....
 Countersigned by
 Authorized Company Representative

IT IS FURTHER ORDERED: That this Order shall be effective on and after July 1, 1944. (Filed Secretary of State's office May 23, 1944.)

Cited in *Brownlee v. Charleston Motor Express Co.*, 189 S. C. 204, 200 S. E. 819 (1939).

Rule 58. Every applicant for a Class D or E Certificate and license thereunder, shall before such certificate and license are issued, and before any operation thereunder, procure and file with the Commission a cargo insurance policy with a company authorized to do business in South Carolina covering cargo of each motor vehicle used or to be used by the applicant. (Filed Secretary of State's office January 15, 1945.)

Rule 59. Each cargo policy issued under the provisions of Section 58-1481, S. C. Code of 1952, and this section, shall carry the following endorsement:

ENDORSEMENT FOR MOTOR VEHICLE CARRIER POLICIES OF INSURANCE FOR CARGO LIABILITY UNDER SECTION 58-1481, S. C. Code of 1952.

The policy to which this endorsement is attached is a cargo insurance policy, and is hereby amended to assure compliance by the Insured, as a common carrier of property by motor vehicles, with Section 58-1481 of the South Carolina Code of Laws, 1952, as amended, and the Rules and Regulations of the Public Service Commission, with reference to making compensation to shippers or consignees for all property belonging to shippers or consignees coming into the possession of such carrier in connection with its transportation service, and with the pertinent rules and regulations of the Public Service Commission.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay, within the limits of liability hereinafter provided, any shipper or consignee for all loss of or damage to all property belonging to such shipper or consignee, and coming into the possession of the Insured in connection with its transportation service, for which loss or damage the Insured may be held legally liable, regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation of the property hereby insured are specifically described in the policy or not. The liability of the Company extends to such losses or damages whether occurring on the route or in the territory authorized to be served by the Insured or elsewhere in South Carolina.

Within the limits of liability hereinafter provided it is further understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement by the Insured, shall affect in any way the right of any shipper or consignee, or relieve the Company from liability for the payment of any claim for which the Insured may be held legally liable to compensate shippers or consignees, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the Insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the Insured and the Company. The Insured agrees to reimburse the Company for any payment made by the Company on account of any loss or damage involving a breach of the terms of the policy and for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

The liability of the Company for the limits provided in this endorsement shall be a continuing one notwithstanding any recovery hereunder. The Company shall not be

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liable for an amount in excess of \$2,000.00, in respect to any loss of or damage to or aggregate of losses or damages of or to the property hereby insured occurring at any one time and place, nor in any event for an amount in excess of \$1,000.00, in respect to the loss of or damage to such property carried on any one motor vehicle, whether or not such losses or damages occur while such property is on a motor vehicle or otherwise.

This endorsement may not be cancelled or its terms or conditions altered, amended or otherwise changed in any particular without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the Insured giving thirty (30) days' notice in writing to the Public Service Commission at its office in Columbia, S. C., copy of such cancellation notice to be given to the Insured or the Company as the case may be, and said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.

Attached to and forming part of Policy No. issued by the
..... (herein called the
Company) of to
of

Dated at this day of,
19.....

Countersigned by

Authorized Company Representation.

Title (Filed Secretary of State's office August 20,
1949.)

Rule 60. No motor vehicle carrier operating under the terms of Sections 58-1401 to 58-1661, shall accept for transportation and delivery any C. O. D. shipments until such motor vehicle carrier has filed with the Commission either cash bond or surety bond in the amount of \$1,000, such bond conditioned for the payment of C. O. D. shipments transported by such carrier within five days of delivery thereof.

Rule 61. Failure to file and keep all insurance policies or surety bonds, as required under this section in full force and effect shall be cause for revocation of certificate and license.

SECTION 7. Operation

Rule 62. For the purpose of identification and information to the public all motor vehicles, including substitute or emergency vehicles, while being operated under a certificate of public convenience and necessity, shall have displayed in such vehicle in a conspicuous place a permit furnished by the Commission, and shall have displayed on the front and rear of all such vehicles the license plates as issued by the Public Service Commission.

Rule 63. In case a motor vehicle carrying passengers becomes disabled while en route and is unable to proceed, any passenger or passengers on such disabled vehicle shall have the privilege of proceeding upon any other passenger-carrying vehicle operating under a certificate from the Commission, on the same route or portion of route, and it shall be the duty of the driver of any such passenger-carrying vehicle to stop on signal and receive such passengers to the extent of the unoccupied seating capacity of such vehicle and carry the same to destination or as near destination as the route of the passing vehicle will permit. The motor-vehicle carrier whose passengers are thus relieved shall pay the second carrier a share of the transportation fee proportionate to the distance such passengers are transported by relieving carrier.

Rule 64. All motor vehicles shall be operated in accordance with the requirements of the State laws and no driver or operator thereof shall operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the way by others, or so as to endanger the life and limb of any person, and drivers of such vehicles shall give half of the road to an approaching vehicle, and shall stop, and not pass any school bus picking up or discharging passengers. When lights are in use they shall be dimmed or deflected when approaching another vehicle from the front.

Rule 65. Drivers of motor vehicles shall be of good moral character, shall be fully competent to operate the vehicles under their charge, and shall hold a driver's license and a driver's permit as provided by State law.

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Rule 66. No driver or operator of a motor vehicle shall drink any intoxicating liquor during the time he is on duty, or operate a motor vehicle while under the influence of intoxicants or narcotics, nor shall he receive fares or make change while vehicle is in motion.

Rule 67. No driver or operator of a motor vehicle shall create any disturbance or unnecessary noise to attract persons to the vehicle.

Rule 68. No driver or operator of a motor vehicle used for the transportation of passengers shall permit on the front seat of such vehicle more than one passenger or permit any passenger to occupy any other portion of said vehicle forward of the back of the driver's seat; but the limitation of one passenger as above described shall not apply to buses especially constructed as such, all of which are authorized to carry on the driver's seat the number of persons for which originally designed and no more.

Rule 69. All bus operators operating in South Carolina are required to cause their buses to wait at least fifteen minutes for late connections if so much time be necessary.

Rule 70. Smoking in any motor bus operated in the State of South Carolina shall cease upon objection of any passenger.

Rule 71. No motor vehicle carrier controlling, operating, or managing any motor vehicle used in the transportation of persons or property shall allow any driver or operator of such motor vehicle to work as a driver or operator for more than a maximum of ten driving hours in any twenty-four hour period, and such driver or operator shall have at least eight consecutive hours' rest in every twenty-four hour period, and shall in no instance allow drivers in their employ to drive motor vehicles in their charge for more than sixty hours in any seven consecutive days. (See: Safety Regulations—Part 5.)

Rule 72. A certificate of public convenience and necessity authorizing the transportation of property only does not authorize the transportation of persons. No motor vehicle carrier holding a certificate authorizing the transportation of property only shall transport persons either with or without compensation over a route or portion of route covered by a certificate authorizing the transportation of persons. Violation of this rule will subject such certificate to cancellation.

Rule 73. Motor bus operators shall not permit motor buses used in intercity service to leave terminal points in South Carolina with more than ten passengers standing, and no passenger shall be left in such terminal point for later schedules. After leaving such terminal point such operators may permit additional passengers to be picked up and carried to destination or to the next terminal point, regardless of the number of standees this would cause, except that in no event shall such standees be permitted to stand anywhere that would obstruct the driver's clear view through the right front door; and, PROVIDED, that on local bus lines of not over fifteen miles in length, the operators of such routes may permit standees on buses used in such service, regardless of the number, except that in no event shall passengers be permitted to stand anywhere that would obstruct the driver's clear view through the right front door. "Terminal points" as used herein means where reserve or stand by equipment is maintained, or properly qualified equipment may be hired or otherwise obtained for transportation of overloads. (Filed Secretary of State's office October 20, 1948.)

Construction of rule.—Where it was contended that the plain and intended meaning of this rule is that it shall apply when the bus leaves the terminal or intermediate station in the actual course of its journey; that it is not presumed to be effective in a short ride from one point to another in

the furtherance of the obligation to obtain another vehicle, if reasonably necessary, it was held that under the circumstances there was no merit to the contention. *Thomas v. Atlantic Greyhound Corp.*, 204 S. C. 247, 29 S. E. (2d) 196 (1944).

Rule 74. All drivers of motor buses in South Carolina, whether regular, extra, or the owner of the line, shall, while on such duty, wear a cap of military, or like, design, with a label on the front thereof showing the name of the operator and carrying an identifying number, such as:

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"IMPERIAL BUS COMPANY NO. 1."

Rule 75. Except when specifically authorized by the Commission no motor vehicle used in the transportation of passengers shall be operated or driven with any trailer or any other vehicle attached thereto, except in case a vehicle becomes disabled while on a trip and is unable to run from its own power such disabled vehicle may be towed to the nearest available point where repair facilities are maintained.

Rule 76. Accidents arising from, or in connection with, the operation of motor vehicles used in the transportation of persons or property resulting in injury to any person or in damage to any property to an apparent extent of \$25.00 or more shall be immediately reported to the Commission in writing. See Safety Rules 4.1-4.6.

Rule 77. The amount of baggage that may be carried in a vehicle with passengers shall not be greater than can be safely and conveniently carried without causing discomfort to the passengers.

Rule 78. All bus operators operating in South Carolina shall provide an adequate system of checking baggage and shall check each piece of baggage transported by them and shall give the stub of such check to the owner of such baggage, except in the case of small pieces of baggage which are personally handled by the passengers themselves.

Rule 79. Subject to the conditions of Rules 77 and 78 of the Commission's Rules governing the operation of motor vehicle carriers in South Carolina, three pieces of hand baggage not to exceed a total weight of one hundred pounds, and not to exceed in value fifty dollars for each such piece of baggage, shall be checked and carried free of charge for each adult passenger. Baggage of additional weight and/or value shall be declared at the time of checking the same, and such excess baggage, whether of weight or value, for both, shall be transported by the carrier at rates to be approved by the Commission.

Rule 80. No motor vehicle shall leave the terminus on any trip requiring travel after one-half hour after sunset, or before one-half hour before sunrise, unless its lighting system is in proper condition. Should the lighting system become defective or out of order, the vehicle shall be brought to a stop at a point off the line of travel of the roadway and shall not proceed until defect is remedied, or if unable to remedy operator may proceed to nearest place for repairs.

Rule 81. Any and all operators of for-hire vehicles, which ply the streets of any city or town, or who openly on the public highways of the State display a sign, flag, or any device which may call the attention of the public to the fact that they are in the transportation business, will be construed by the Commission as being in such business and as soliciting, and will be amenable to and will be required to comply with the Motor Vehicle Carriers' Law.

Rule 82. Bus drivers and operators shall not use bus passenger waiting rooms as a loafing room while off duty, and such drivers and operators will use these waiting rooms only when necessary to properly conduct their business; and when in such rooms will conduct themselves in an orderly manner. In no instance shall such bus driver or operator smoke any cigar, cigarette, pipe, tobacco or other substance while in a bus passenger waiting room in South Carolina.

Rule 83. No Negro porter shall be allowed or permitted to take up tickets from passengers on motor buses operated within the State of South Carolina. (See Commission's Safety Rules and Regulations under separate cover.)

SECTION 8. Equipment

Rule 84. Every motor vehicle shall be maintained in a safe and sanitary condition at all times and shall be at all times subject to inspection by the Commission and its duly authorized representatives.

Rule 85. Every motor vehicle shall, when leaving a terminus, be equipped with at least one extra serviceable tire, capable of fitting each wheel.

Rule 86. Every motor vehicle shall be equipped with a standard speedometer which shall be maintained in good working order.

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Rule 87. Every motor vehicle shall carry at all times at least two wheel chocks.

Rule 88. Every enclosed (bus) motor vehicle used in the transportation of passengers shall have an emergency door in the rear, or on the side of the vehicle at or near the rear.

Rule 89. Every bus shall carry at all times one metal first aid kit with supplies sufficient for ten injured persons.

Rule 90. Motor Vehicle Carrier vehicles when used for the transportation of explosives shall display the word "EXPLOSIVES" in letters not less than six inches high on the front, rear, and each side thereof. The ends and sides of such vehicles, when of the open body type, must be high enough to prevent packages of explosives from falling off, and in no event shall the explosives be loaded to within twelve inches of the top of the body of such vehicles, and the floor must be so tight that nothing can be passed through it. Any exposed metal on the sides of the body, liable to come in contact with explosives, must be covered or protected with wood or other non-metallic material. Such vehicles must be equipped with at least two fire extinguishers of standard make. No metal, metal tools, carbides, oils, matches, fire arms, electric storage batteries, inflammable substances, acids, oxidizing or corrosive compounds shall be carried in the bed or body of any such motor vehicle used for the transportation of explosives. Blasting caps or electric blasting caps must not be hauled on a vehicle containing other explosives. Explosives shall be transported only in trucks or semi-trailer trucks to which no trailers are attached. If the transportation of explosives is between the hours of sunset and sunrise the front and rear "EXPLOSIVE" sign must be illuminated. Explosives shall not be transported in any vehicle transporting passengers.

Rule 91. Every motor vehicle purchased by a motor carrier since January 1, 1937, shall be equipped with (a) two stop lights on the rear, one at each side, and head lamps of the dual- or multiple-beam type. (b) Safety glass: where glass is used in windshields, windows, doors, *et cetera*, it shall be standard safety glass, approved by the American Standards Association; (c) brakes on all wheels, except any semi-trailer the gross weight of which does not exceed 3,000 pounds. Note: In accordance with Rule 69 published with the Acts of South Carolina, 1938, page 3030. (See Commission's Safety Rules and Regulations under separate cover.)

SECTION 9. Penalties and Cancellation

Rule 92. Failure on the part of any owner, driver or operator of a motor vehicle to comply with any rules and regulations of the Commission or requirements of Act of the General Assembly of South Carolina now or hereafter in force, will be sufficient cause for the Commission, in its discretion, to revoke his certificate, or permit.

Rule 93. The foregoing rules and regulations are for general application, and are subject to such changes and modifications as the Commission, from time to time may determine advisable and also such exceptions as may be considered by the Commission as just and reasonable in individual cases.

Electric Utilities

Pursuant to §§ 24-112 and 58-111, S. C. Code of 1952.

(Filed Secretary of State's office June 8, 1949.)

AUTHORIZATION OF RULES

SECTION 58-111, S. C. Code of 1952 provides that: "(a) The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every public utility as herein defined."

SECTION 24-112, S. C. Code of 1952 provides: "*Rules and Regulations.*—The Commission may make such rules and regulations not inconsistent with law as may be proper in the exercises of its power or in the performance of its duties under this Chapter, all of which shall have the force of law."

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In accordance with the above provisions, the Public Service Commission has adopted the following rules and fixed the following standards for electric service, to become effective July 1, 1949. All previous rules or standards conflicting with those contained herein are hereby superseded.

The adoption of these rules shall in no way preclude the Public Service Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint, or upon its own motion, or upon the application of any utility. Furthermore, these rules shall not in any way relieve either the Commission or the utilities of any duties under the laws of this State.

APPLICATION OF RULES

(a) These rules shall apply to any person, firm, or corporation (except municipalities, within their corporate limits, or agents thereof and any others exempt by South Carolina Statutes) which is now or may hereafter become engaged as a public utility in the business of furnishing electric current for domestic, commercial, or industrial consumers within the State of South Carolina.

(b) The rules are intended to define good practice which can normally be expected. They are intended to insure adequate and reasonable service and prevent unfair charges to the public and to protect the utilities from unreasonable demands. The cooperation of the utilities with the Commission is presupposed.

(c) In any case where compliance with any of these rules introduces unusual difficulty, such rule may be temporarily waived by the Commission upon application of any person or the utility. If in such case compliance with the rule would cost more than the results of such compliance are worth to the public and consumers of electric current, it may be permanently set aside by the Commission.

(d) *Definition:* In the interpretation of these rules, the word "Commission" shall be taken to mean The Public Service Commission of South Carolina; the word "Utility" shall be taken to mean any person, firm, corporation, (except municipality within its corporate limits or agent thereof and any others exempt by South Carolina Statutes) engaged in the business of supplying electric current to domestic, commercial or industrial users within this State; and the word "Consumer" shall be taken to mean any person, firm, corporation, municipality or other political subdivision of the State furnished with service by such utility.

Rule 1. Records and reports.

1. *Records.*—(a) A complete record shall be kept of all tests and inspections made under these rules as to the quality or condition of service which is rendered.

(b) All records of tests shall contain complete information concerning the tests, including the date, hour, when essential, and place where the test was made; the name of the person making the test, and the result.

(c) All records required by these rules shall be preserved by the utility for at least two years after they are made. Such records shall be kept within the State at the office or offices of the utility, and shall be open for examination by the Commission or its representatives at all reasonable hours.

2. *Reports to Commission.*—(a) Each utility shall at such times and in such form as the Commission shall prescribe, report to the Commission the results of all tests required to be made, or the information contained in any records required to be kept by the utility.

(b) Each utility operating in the State shall make an annual report to the Commission giving such information as the Commission may direct.

Rule 2. General service provisions.

1. *Inspection of Plant and Equipment.*—(a) Each utility shall construct and maintain its plant, distribution system and facilities at all times in proper condition for use in rendering safe, adequate and continuous service.

(b) Each utility shall, upon request of the Commission, file with the Commission a statement regarding the condition and adequacy of its plant, equipment, facilities and service in such form as the Commission may require.

2. *Interruption of Service.*—Each utility shall keep a record of any interruption of service, affecting its station busses, or any of its outgoing feeders or circuits, including a statement of the time, duration and cause of any such interruption.

3. All reasonable care shall be exercised by the utility to reduce the hazard to person or property of (1) employees working in and about its plants and lines, (2) the utilities

customers up to point on customers premises where utility's facilities are connected to customers facilities and (3) the general public on account of utilities facilities in public streets and ways.

4. *Accidents.*—Each utility shall, as soon as possible, report to the Commission each fatal accident happening in connection with the operation of its property.

5. *Complaints.*—Each utility shall make a full and prompt investigation of all service complaints made to it by its consumers, either directly or through the Commission. It shall keep a record of all such complaints received which record shall show the name and address of the complainant, the date and character of the complaint and the adjustment or disposal made thereof.

Rule 3. Information for consumers.

1. *Information for Consumers.*—(a) Each utility shall, upon request, give its consumers such information and assistance as is reasonable in order that consumers may secure safe and efficient service; and upon request, it shall render every reasonable assistance in securing appliances properly adapted and adjusted to the service furnished.

(b) Where two or more rate schedules are available, the utility will assist the customers to a reasonable extent, in determining which schedule to select, however, the utility cannot assume responsibility for the choice of the customer.

(c) Each utility shall adopt some means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters or by the adoption of a practice of explaining the method of reading meters to individuals or groups upon application.

Rule 4. Meter reading and billing for service.

1. *Meter Readings.*—(a) Bills shall be rendered for metered service periodically, and shall show the readings of the meter at the beginning and end of the period for which bill is rendered, the resulting number and kinds of units of service supplied and the date of the end of the period for which bill is rendered.

(b) On all bills which are computed on any other basis than on an approved rate schedule for service, the factors used in computing the bill shall be clearly stated, unless customer has been given such other factors, so that the amount may be readily computed from the information appearing on the bill.

(c) Each bill subject to discount for prompt payment shall bear upon its face the date when the bill was mailed, or left at the premises of the consumer, or the latest date on which it may be paid without loss of discount or incurring of penalty.

Note.—By rule filed in the Secretary of State's office June 11, 1949. Compliance with this rule will be deemed as compliance with the provisions with reference thereto in the Commission's Order No. E-628, Docket No. 6490.

Rule 5. Meters, meter tests and records.

1. *Location of Meters.*—(a) No consumer's meter shall be installed in any location where it may be unreasonably exposed to heat, cold, dampness or other cause of damage, or in any unduly, dirty or inaccessible location.

(b) Outdoor meters shall be used where practicable. Meters should not be placed in coal or wood bins or on partitions forming such bins, or on any unstable supports subject to vibration and should be free of obstruction for a distance of three feet in front of the meter and with sufficient space below the meter to allow the use of proper test facilities.

(c) Meters should be easily accessible for reading, testing and making necessary repairs and adjustments and where more than one meter is installed at one location, sufficient space shall be allowed between and in front of meters to facilitate repairs and tests. Each customer shall tag or mark each "house" loop to indicate circuit metered.

(d) Each customer shall provide and maintain a suitable and convenient place for the location of meters, where they will be readily accessible at any reasonable hour for the purpose of reading, testing, repairing, etc., and such other appliances owned by the utility and placed on the premises of the consumers shall be so placed as to be readily accessible at such times as are necessary, and the authorized agent of the utility shall have authority to visit such meters and appurtenances at such times as are necessary in the conduct of the business of utility.

2. *Testing Facilities.*—(a) Each utility furnishing metered electric service shall, unless specifically excused by the Commission, provide and have available such meter laboratory, standard meters, instruments and facilities as may be necessary to make the tests required by these rules, together with such portable indicating electrical testing instruments, watt-

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hour meters and facilities of suitable type and range for testing service watt-hour meters, voltmeters and other electrical equipment, used in its operation, as may be deemed necessary and satisfactory to the Commission.

(b) All portable indicating electrical testing instruments such as volt-meters, ammeters and watt-meters, when in regular use for testing purposes, shall be checked against suitable reference standards periodically, and with such frequency as to insure their accuracy whenever used in testing service meters of the utility.

3. *Method of Determining Average Error of Meters.*—The average error of a service watt-hour meter shall be determined as follows: The error at light load—here defined as approximately 10% of the rated capacity of the meter—shall be determined by taking the average of at least two errors, determined from as many separate tests on the same light load, which errors must agree within one-half per cent ($\frac{1}{2}\%$).

In the same manner the error at heavy load—here defined as approximately the rated capacity of the meter—shall be determined.

The average error of the meter shall then be determined by taking an average of the error at light load and the error at heavy load, proper account being taken of the sign of these two errors.

4. *Meter Accuracy.*—(a) *Creeping:* No watt-hour meter which registers on "no load" when the applied voltage is less than one hundred and ten (110) per cent of standard service voltage shall be placed in service or allowed to remain in service.

(b) *Initial Accuracy Requirements.*—No watt-hour meter shall be placed in service which is in any way mechanically defective, or which has incorrect constants or which has not been tested for accuracy of measurement and adjusted, if necessary, to meet these requirements:

Average error not over 1.5% plus or minus;

Error at heavy load not over 1% plus or minus;

Error at light load not over 2% plus or minus;

(c) *Adjustment After Test.*—Whenever a test made by the utility or by the Commission on a service watt-hour meter connected in its permanent position in place of service shows that the average error is greater than that specified above, the meter shall be adjusted to bring the average error within the specified limits.

5. *Periodic Tests of Meters.*—(a) Each watt-hour meter shall be tested according to the following schedule:

(1) All two and three-wire single phase induction type watt-hour meters, commonly known as the self-contained type, shall be tested at least once every one hundred (100) months.

(2) All self-contained polyphase watt-hour meters shall be tested at least once every sixty (60) months.

(3) All single phase and polyphase watt-hour meters that require the use of either current or potential transformers, or both, shall be tested at least once every twenty-four (24) months.

6. *Meter Testing on Request of Consumers.*—(a) Each utility shall, at any time (when requested in writing by a consumer) upon reasonable notice, test the accuracy of the meter in use by him.

No deposit or payment shall be required from the consumer for such meter test except when a consumer requests a meter test within six months after date of installation or the last previous test of a meter, in which case he shall be required upon request by the utility to deposit the estimated cost of the test, but not to exceed \$5.00 without approval of the Commission.

(b) The amount so deposited with the utility shall be refunded or credited to the consumer, as a part of the settlement of the disputed account if the meter is found, when tested, to register more than 3% fast, otherwise the deposit shall be retained by the utility.

(c) A consumer may be present when the utility conducts the test on his meter, or, if he desires, may send an expert or other representative appointed by him.

(d) A report giving the name of the consumer requesting the test, the date of the request, the location of the premises where the meter has been installed, the type, make, size, and serial number of the meter, the date of removal, the date tested, and the result of the test, shall be kept by the utility.

7. *Adjustment of Bills for Meter Error.*—(a) *Fast Meters.*—If on test of any electric meter made by the Commission, as may be later authorized, or the utility under Paragraphs 5 and 6, whether at the request of a consumer or not, it may be found more than 3% fast, the utility shall adjust the measured units from the date of the last meter reading

to the time the meter was removed or corrected so as to reflect the correct usage in rendering the ensuing bill. In addition the utility shall refund or credit the consumer the difference between the amount billed and the estimated amount which should have been billed for service supplied during the two previous billing periods. If the meter has not been in service for the full two billing periods covered by the bills previously rendered or if the date of error can be fixed to be within the two billing periods covered by the bills previously rendered, then the estimated amount to be refunded to consumer shall reflect these facts.

(b) *Slow Meters.*—If on test of any electric meter made by the Commission, as may be later authorized, or by the utility under Paragraphs 5 and 6, whether at the request of the consumer or not, it be found more than 3% slow, the utility shall adjust the measured units from the date of the last meter reading to the time the meter was removed or corrected, so as to reflect the correct usage, in rendering the ensuing bill. In addition the utility may collect from the consumer an amount estimated to be due from the consumer for the electricity used but not charged for in the bills rendered for service supplied during the two previous billing periods. If the meter has not been in service for the full two billing periods covered by the bills previously rendered or if the date of error can be fixed to be within the two billing periods covered by the bills previously rendered, then the estimated amount due from customer shall reflect these facts.

Rule 6. Operation of utility.

1. *Standard Frequency.*—Each utility supplying alternating current, shall adopt a standard frequency, the suitability of which may be determined by the Commission, and shall maintain this frequency within 15 seconds plus or minus of standard at all times during which service is supplied; *provided, however*, that momentary variations of frequency of more than 15 seconds, which are clearly due to no lack of proper equipment or reasonable care on the part of the utility, shall not be construed a violation of this rule.

2. *Standard Voltage.*—Each utility shall adopt standard average voltages for its different classes of constant voltage service. The voltage maintained at the utility mains shall at all times be reasonably constant, and the variations in voltage from the average shall in no case exceed the limitations as prescribed below.

3. *Voltage Fluctuations Caused by Consumers' Equipment.*—The utility shall not be required to furnish service to customers whose equipment is operated in such manner as to cause unreasonable voltage fluctuations on the utility's circuits, which fluctuations are detrimental to service to other customers.

Where a separate transformer is required to eliminate fluctuations due to welding or X-ray equipment, the utility may make a reasonable charge for the transformer and line capacity required.

4. When only one set of overhead service wires, called "service drop," is required to connect a small customer to utilities' service mains the utility shall provide such "service to customers' premises which point shall be the point nearest the utility's electric circuit drop," including the attachments at the point where service drop wires first are attached to be used in supplying service to customer. The customer shall provide "service entrance facilities" including meter loop and entrance switch or circuit breaker complying with rules of the utility, and service entrance conductors from point of attachment of the utility's service drop on the customers' premises. The customer shall provide a substantial insulated point of attachment for service drop wires. This provision does not apply to large customer connections as they vary so greatly that each requires special consideration.

When service to the customer requires individual facilities (such as oil circuit breakers, transformers, etc.) to be located on customer's premises on the ground or in a vault, the customer shall provide suitable, adequate and readily accessible space for same and shall keep the way clear at all times. Utility property installed on customer's premises shall remain property of the utility and may be removed for testing, repairs or when changes in service conditions justify change or removal.

For substations erected to serve an individual customer the utility will provide either suitable supports on the substation structure or a suitable structure outside and immediately adjacent to its substation lot line to which the customer shall extend his facilities, and the customer will install all facilities beyond the point of delivery thus established. When required by the utility the customer shall install one set of main disconnecting switches which shall control all of the customer's load other than a fire pump circuit, if any.

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The meter installation of the utility may include enclosures that may be locked by the utility and not accessible to the consumer.

For service rendered for lighting purposes plus or minus voltage variations from the standard adopted, should not exceed 6%. For service rendered for power, or primarily for power or for resale purposes, the voltage variations should not exceed 10% above or below the standard average voltage.

A greater variation of voltage than specified above may be allowed when service is supplied directly from the transmission line or in a limited or extended area where consumers are widely scattered, and the business done does not justify close voltage regulation. In such cases the best voltage regulation should be provided that is practicable under the circumstances.

Variations in the voltage in excess of those specified, caused by the operation of power apparatus on consumers' premises, which necessarily requires large starting current by the action of the elements, and by infrequent and unavoidable fluctuations of short duration due to station operation, shall not be construed a violation of this rule.

Rule 7. Voltage surveys and records.

1. Each utility shall provide itself with suitable indicating or recording volt-meters, and shall make a sufficient number of voltage tests periodically so as to insure compliance with the voltage requirements cited above. These tests shall be made at appropriate points upon the utility's distribution lines.

2. *Station Instruments and Records.*—Each utility shall have installed at its generating station suitable instruments to indicate the frequency and voltage of the service rendered from that station, together with the magnitude of the loads upon it. Each utility shall keep a station record at attended stations, which will show: (a) The time of starting and shutting down the generating units. (b) And readings of such instruments as necessary. (c) And of all interruptions to service affecting bus bars or distribution systems, with the time, duration, and the cause, when known, of the interruption.

Rule 8. General provisions.

Deposits From Consumers to Guarantee Payment of Bill.—(a) Each utility may require from any consumer, or prospective consumer, a cash deposit or other acceptable security intended to guarantee payment of bills. Such required deposit or other security shall not exceed the amount of an estimated sixty days' bill of such consumer. Interest shall be paid by the utility upon cash deposits at the rate of 4% per annum, payable upon the return of the deposit or at such other time as the Commission may direct, for the time such deposit was held by the utility, and the consumer was served by the utility; *provided* such deposit was not held for less than six months. If security other than cash is tendered by consumer and such security is not acceptable to the utility, then the consumer may submit to the Commission security offered and the action of the Commission shall be binding on both parties.

(b) Each utility having on hand cash deposits from consumers or hereafter receiving deposits from them shall keep records to show: (1) the name of each consumer making such deposit; (2) the premises occupied by the consumer when the deposit was made; (3) the amount and date of making the deposit; (4) a record of each transaction concerning such deposit, such as payment of interest, interest credited, etc.

(c) Each utility shall issue to every consumer from whom a cash deposit is received, a non-assignable receipt.

(d) Each utility shall provide reasonable ways and means whereby a depositor who makes application for the return of his deposit or any balance to which he is entitled, but is unable to produce the original certificate of deposit or receipt, may not be deprived of his deposit or balance.

(e) Each utility requiring a deposit to insure payment of bills shall pay interest to customers at least every five years, or upon direction of the Commission. Interest payments may be made by check or by a credit to current billing.

Rule 9. Discontinuance of service.

Discontinuance of Service for Violation of Rules.—(a) No utility shall discontinue the service to any consumer for violation of its rules or regulations, or for nonpayment of bills without notice to customer to comply with its rules and regulations or to pay his bills.

Service shall actually be discontinued only after at least 24 hours' notice of such intention shall have been given to the consumer by the utility: *Provided, however,* that

where fraudulent use of current is detected, or where a dangerous condition is found to exist on the consumer's premises, the service may be shut off without notice in advance.

(b) Whenever the service is turned off for violation of rules or regulations, nonpayment of bill, or fraudulent use of current, the utility may make a reasonable charge for the cost of renewing it.

(c) Where a consumer has been required to make a guarantee deposit this shall not relieve consumer of the obligation to pay the service bills when due, but when such deposit has been made and service has been discontinued on account of nonpayment of bill, then in such event unless consumer shall, within forty-eight hours after service has been discontinued, apply for reconnection of service and pay the account plus a reconnection charge, then in such event the utility may apply the deposit of such consumer toward the discharge of such account and shall as soon thereafter as practicable, refund the consumer any excess of the deposit.

(d) No electric utility company shall be required to furnish its electric service to any applicant, who at the time of such application, is indebted under an undisputed bill to such utility company for service, either gas or electric, previously furnished such applicant, or furnished any other member of the applicant's household or business.

Rule 10. Replacement of meters.

Replacement of Meters and Changes in Location of Service.—(a) Whenever a consumer requests the replacement of the service meter on his premises, such request shall be treated as a request for the test of such meter, and as such, shall fall under the provisions of Rule 5, paragraph 6.

Rule 11. Maps.

1. *Maps.*—(a) Suitable maps and "one-line diagrams" shall be kept on file with the Commission showing the size, character and location of each main circuit and generating stations and main substations.

(b) In addition to the maps showing main circuits and feeders, there shall also be kept on file in the Commission's office large scale county maps on which shall be shown the rural distribution lines of the utility. When an application for a Certificate of Convenience and Necessity is made by a utility, a section of map showing the proposed line extension shall accompany such application. These map sections shall be used by the Commission to keep up to date the rural line maps maintained in the Commission's office.

Rule 12. Service extensions.

Rules for Service Extension.—When a prospective customer or customers of an electric utility, makes application for service at a point not immediately adjacent to a service line of a utility, if the requirement of such service is reasonable, it shall be rendered under reasonable terms and conditions determined by the facts of each case.

Rule 13. Rate schedules—Service conditions.

1. *Rate Schedule.*—(a) Copies of all schedules of rates for service, forms of contracts, charges for service connections and extensions of circuits, and of all rules and regulations covering the relations of consumer and utility, shall be filed by each utility in the office of the Commission. Complete schedules, contracts, forms, rules and regulations, etc., as filed with the Commission shall be on file in the local offices of the utility, and shall be open to the inspection of the public.

(b) No utility operating in the State shall change its schedule of rates, contract forms or service rules until such change has been approved by the Commission.

(c) Each and every customer purchasing the same class of service from a utility shall be charged the same rate, which rate shall be the regular published rate as filed with and approved by the Commission.

(d) All utilities operating in South Carolina shall give each customer the same date, month after month, as the last date on which discount, if any, will be allowed.

(e) All rates, tolls, charges and fares proposed to be put into effect by any public utility under the regulation of this Commission shall be first approved by this Commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law.

(f) No rate, toll, charge, fare nor service of any public utility under the regulation of this Commission shall be deemed approved nor consented to by the mere filing of a schedule or other evidence thereof in the offices of the Commission; but such approval and consent to be good must be actually and affirmatively made.

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2. *Rules and Regulations.*—(a) Each electric utility shall adopt such “Rules and Regulations,” “Service Regulations,” “Terms and Conditions,” etc., as necessary in the operation of the utility. Such service “Conditions” and/or “Regulations” shall be approved by and filed with the Commission.

Rule 14. Specifications for overhead wire crossings.

(Filed Secretary of State's office October 17, 1946.)

1. Electric Light and Power Transmission Lines and Telegraph and Telephone lines that may hereafter be constructed over streets, highways, alley ways, and railroad tracks, and wires crossing each other shall conform to the following general requirements for the safety of the public and the employees of the public service companies. Existing crossings, not in compliance with the following specifications shall be made to conform with these specifications within a reasonable length of time. Any person, firm or corporation contemplating construction work that will reduce the clearances or safety provisions herein specified shall notify the utility affected of such intention and shall not proceed with the contemplated construction or work until provision has been made for the proper clearance and safety provisions to be maintained.

2. (a) Poles or towers supporting the crossing span and the adjoining span on each side shall be in a straight line, if practicable.

(b) The maximum transverse fiber stress in poles, due to the weight of the conductors plus the added weight of ice 0.25 inch in radial thickness combined with a horizontal wind pressure of four (4) pounds per square foot on the projected area of the ice covered wires and poles, supporting electric light and power wires or telephone and telegraph wires crossing over railroad tracks shall not exceed at the time of installation one-four ($\frac{1}{4}$) of the ultimate strength of the pole, based upon wood strength as specified by the National Electrical Safety Code. The supports of railroad crossing spans shall be replaced as soon as the above required initial calculated strength has been reduced 33 $\frac{1}{3}$ % by deterioration.

At highway crossings requiring grades B, C or N construction as defined and specified by the 5th Edition of the National Electrical Safety Code; poles supporting electric light and power wires or telephone and telegraph wires shall be of such initial size and so guyed or braced, where required in paragraph 2 (e) below, as to withstand safely the loads to which they may be subjected, including linemen working on them. Where grade B or C construction is required, wood poles shall have a nominal top circumference of not less than 15 inches and the maximum transverse fiber stress imposed on these poles, due to the weight of the conductors plus the added weight of ice, 0.25 inch in radial thickness, combined with a horizontal wind pressure of four (4) pounds per square foot on the projected area of the ice covered wires and poles, shall not exceed at the time of installation and replacement the percentages of the ultimate strength of poles given in the following table, based upon wood strength as specified by the National Electrical Safety Code.

<i>Grade of Construction</i>	<i>When Installed</i>	<i>At Replacement</i>
Grade B	25%	37.5%
Grade C	50%	75 %

(c) The strength requirements may be met by poles alone or with the aid of guys and braces; when met by the use of guys or braces, the guys or braces shall be considered as carrying the total transverse load.

(d) In computing the transverse loading when more than 16 wires, placed on 6-pin crossarms or longer (not including cables supported by messenger wires) are involved, where the pin spacing does not exceed 15 inches, the load may be calculated on $\frac{2}{3}$ the total number of wires, with a minimum of 10 wires.

(e) Poles supporting crossing spans over railroads or highways are not required to be guyed unless the strength requirements of 2 (b) above cannot be met with the pole alone or unless the conductor tensions are unbalanced, or the adjacent spans are out of alignment with the crossing span by 5° or more, or unless special conditions exist which would clearly indicate the need of guys.

(f) Conductors shall be of material which will not corrode excessively and of sufficient strength so as not to exceed 60% of its rated ultimate strength during a loading of 0.25 inch ice measured radially, combined with a horizontal wind pressure of 4 lbs. per square foot on the projected area of the ice covered conductor at a temperature of 15° F. Also the tension of 60° F., without external load, shall not exceed the following percentages of the conduct or ultimate strength.—Initial unloaded tension—35 per cent—Final unloaded

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tension—25 per cent. In calculating the strain on conductors, under the storm loading conditions as specified above, the resultant load in pounds per square foot must be increased by amounts specified in the table in Rule 251 on page 99 of the 5th edition of the National Electrical Safety Code.

(g) The above specifications are not intended to apply to construction for temporary use. The strength of poles placed for temporary use shall not, during the life of the plant, be less than $\frac{2}{3}$ of the strength required under the same loading conditions for new poles as specified in paragraph 2 (b) above.

(h) No pole or tower shall be less than twelve (12) feet from the nearest track except that at sidings a clearance of seven (7) feet may be allowed, measurement being made from the near rail.

Note: Where necessary to provide safe operating conditions for any cause whatsoever including unobstructed view of signals, signs, etc., along tracks, parties concerned shall cooperate in locating poles to provide the necessary clearance where practical.

3. Where pin-type construction is employed the arms shall be double on all electric power lines and telephone and telegraph lines at railroad crossings; it being understood, however, that this Rule does not prohibit the use of pole bands, strain bolts or other attachments, used in lieu of crossarms where they provide a strength equal to the strength which would be supplied by double crossarms.

4. Unusually long crossing spans shall be avoided whenever practicable. Where practicable, the length of the adjoining span shall not exceed that of the crossing span by more than fifty per cent at railroad crossings and 100 per cent at highway crossings.

Note: Modifications of the above loading assumptions, based on local experience, weather records, or both, or for the light loading district, in the State as shown by the National Electrical Safety Code may be made, subject to change upon review by the Public Service Commission.

The word "practicable," as used in former rule, did not mean the same thing as "possible," since the shortest possible line across a highway would be at right angles to it. The meaning was that the span shall be as short as is reasonably possible, taking

into consideration the mechanical factors and the necessity for reasonable safety to the public. *Woody v. South Carolina Power Co.*, 202 S. C. 73, 24 S. E. (2d) 121 (1943).

5. MINIMUM VERTICAL CLEARANCE OF WIRES ABOVE GROUND OR RAILS

(All voltages are between wires unless otherwise stated. Supply wires include trolley feeders.)

Nature of Ground or Rails Underneath Wires	Guys, Messengers, Communication, Span and Lightning Protection Wires, Effectively Grounded Continuous-Metal-Sheath Cable; for all Voltages	Open Supply Line Wires, Arc Wires and Service Drops			Trolley Contact Conductors and Associated Span or Messenger Wires	
		0 to 750 Volts	750 to 15,000 Volts	15,000 to 50,000 Volts	0 to 750 Volts to Ground	Exceeding 750 Volts to Ground

WHERE WIRES CROSS OVER

	Feet	Feet	Feet	Feet	Feet	Feet
Track rails of railroads (except electrified railroads using overhead trolley conductors) handling freight cars on top of which men are permitted	27	27	28	30	22	22
Track rails of railroads (except electrified railroads using overhead trolley conductors) not included above	18	18	20	22	18	20
Public streets, alleys or roads in urban or rural districts	18	18	20	22	18	20
Driveways to residence garages	10	10	20	22	18	20
Spaces or ways accessible to pedestrians only	15	15	15	17	16	18

WHERE WIRES RUN ALONG, AND WITHIN THE LIMITS OF PUBLIC HIGHWAYS OR OTHER PUBLIC RIGHTS-OF-WAY FOR TRAFFIC

Streets or alleys in urban districts	18	18	20	22	18	20
Roads in rural districts	14	15	18	20	18	20

Note: 1. For voltages exceeding 50,000 volts between conductors the clearances given in this table shall be increased at the rate of 0.5 inch for each 1,000 volts of the excess.

2. The notations and exceptions to this table given in Rule 232 of the 5th edition of the National Electrical Safety Code, shall apply except footnote 1 which shall be subject to the approval of this Commission.

6. WIRE CROSSING CLEARANCES

(All voltages are between wires except for trolley contact conductors where voltages are to ground.)

Nature of Wires Crossed Over	Communication Wires, Including Cables and Messengers	Open Supply Wires 0 to 750 Volts, Supply Cables, All Voltages, Having Effectively Grounded Continuous Metal Sheaths or Mes- sengers, Messengers Associated with Such Cables		Open Supply Wires and Service Drops		Guys, Span Wires, Lightning Protection Wires
		Line Wires	Service Drops	750 to 8,700 Volts	8,700 to 50,000 Volts	
	Feet	Feet	Feet	Feet	Feet	Feet
Communication, in- cluding cables and messengers	2	4	2	4	6	2
Supply cables, all voltages, having ef- fectively grounded continuous metal sheaths or messengers, messengers associated with such cables	4	2	2	2	4	2
Open supply wires, 0 to 750 volts	4	2	2	2	4	2
750 to 8,700 volts.....	4	2	4	2	4	4
8,700 to 50,000 volts....	6	4	6	4	4	4
Trolley contact conductors	4	4	4	6	6	4
Guys, span wires, lightning protection wires, service drops 0 to 750 volts.....	2	2	2	4	4	2

Note: 1. For voltages exceeding 50,000 volts between conductors the clearances given in this table shall be increased at the rate of 0.5 inch for each 1,000 volts of the excess.

2. The notation and exceptions of this table, given in Rule 233 of the 5th edition of the National Electrical Safety Code, shall apply.

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7. CLEARANCES FROM BRIDGES

Voltages Between Conductors	Readily Accessible Portions (Other than Traveled Ways) of Any Bridge, Including Wing Walls or Bridge Attachment		From Ordinarily Inaccessible Portions of Bridges (Other Than Brick, Concrete, or Masonry) and from Abutments	
	For Conductors Attached to Bridge	For Conductors Not Attached to Bridge	For Conductors Attached to Bridge	For Conductors Not Attached to Bridge
	Feet	Feet	Feet	Feet
0 to 2,500	3.0	3.0	0.5	3.0
Over 2,500 to 5,000.....	3.0	3.0	1.0	3.0
Over 5,000 to 8,700.....	3.0	3.0	3.0	3.0
Over 8,700 to 15,000.....	5.0	5.0	5.0	5.0
Over 15,000 to 25,000.....	7.5	7.5	7.5	7.5
Over 25,000 to 35,000.....	7.5	9.0	7.5	9.0
Over 35,000 to 50,000.....	7.5	12.0	7.5	12.0

Note: The notations and exceptions to this table, given in Rule 234D of the 5th Edition of the National Electrical Safety Code shall apply.

8. Except as hereinabove specifically designated, the rules laid down in the NATIONAL ELECTRICAL SAFETY CODE, *Fifth Edition*, published as of September, 1941, by the Bureau of Standards, Department of Commerce, U.S.A., and further known as "Handbook Series of the Bureau of Standards Handbook H-32," shall be used as a guide for specifications for overhead wire crossings.

Gas Service

Pursuant to § 58-111, S. C. Code of 1952.

(Filed Secretary of State's office August 4, 1937.)

STATUTORY PROVISIONS.

Rule 1. Authorization of Rules.

(a) Section 58-111 provides: "The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State, and the State hereby asserts its rights to regulate the rates and services of every public utility as herein defined."

In accordance with the above provisions the Public Service Commission has adopted the following rules and fixed the following standards for manufactured gas service, to become effective the first day of October, 1922. All previous rules or standards conflicting with those contained herein are hereby superseded.

(b) The adoption of these rules shall in no way preclude the Public Service Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any utility. Furthermore, these rules shall not in any way relieve any utility from any of its duties under the laws of this State.

Rule 2. Application of Rules.

(a) These rules shall apply to any person, firm, or corporation, except municipalities or agents thereof, which is now or may hereafter become engaged as a public utility in

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the business of furnishing gas to domestic or commercial consumers within the State of South Carolina.

(b) The rules are intended to define good practice which can normally be expected. They are intended to insure adequate service and prevent unfair charges to the public, and to protect the utilities from unreasonable demands. The cooperation of the utilities with the Commission is pre-supposed.

(c) In any case where compliance with any of these rules introduces unusual difficulty, such rules may be temporarily waived by the Commission upon application of the utility. If in such case compliance with the rule would cost more than the results of such compliance are worth to the public and gas consumers, it may be permanently set aside by the Commission.

Rule 3. Definition.

In the interpretation of these rules the word "Commission" shall be taken to mean the Public Service Commission of South Carolina; the word "utility" shall be taken to mean any person, firm, corporation, except municipalities or agents thereof, engaged in the business of supplying manufactured gas to domestic, commercial, or industrial users within this State; and the word "consumer" shall be taken to mean any person, firm, corporation, municipalities, or other political sub-division of the State supplied by any such utility.

RECORDS AND REPORTS

Rule 4. Records.

(a) A complete record shall be kept of all tests and inspections made under these rules as to the quality or condition of service which it renders.

(b) All records of tests shall contain complete information concerning the test, including the date, hour, and place where the test was made; the name of the person making the test and the result.

All records required by these rules shall be preserved by the utility for at least two years after they are made. Such records shall be kept within the State at the office or offices of the utility, and shall be open for examination by the Commission or its representatives at all reasonable hours.

Rule 5. (a) Reports to Commission.

Each utility shall, at such times and in such form as the Commission shall prescribe, report to the Commission the results of all tests required to be made or the information contained in any records required to be kept by the utility.

Rule 5. (b).

Each utility operating in the State shall make an annual report to the Commission giving such information as the Commission may direct.

GENERAL SERVICE PROVISIONS

Rule 6. Inspection of plant and equipment.

(a) Each utility shall maintain its plant, distribution system, and facilities at all times in proper condition for use in rendering safe, adequate and continuous service.

(b) Each utility shall, upon request of the Commission, file with the Commission a statement regarding the condition and adequacy of its plant, equipment, facilities and service in such form as the Commission may require.

Rule 7. Interruption of service.

Each utility shall keep a record of any condition resulting in any interruption of service affecting its entire system or major division thereof, including a statement of the time, duration, and cause of any such interruption.

Rule 8. Accidents.

Each utility shall, as soon as possible, report to the Commission each accident happening in connection with the operation of its property, facilities, or service, wherein any person shall have been killed or seriously injured or whereby any serious property damage shall have been caused. Such first report shall later be supplemented by as full a statement as is possible of the cause and details of the accident and the precautions, if any, which have been taken to prevent similar accidents. Such reports or statements shall be kept confidential by the Commission and shall not be accessible for public inspection.

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Rule 9. Complaints.

Each utility shall make a full and prompt investigation of all service complaints made to it by its consumers, either directly or through the Commission. It shall keep a record of all such complaints received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof.

Rule 10. Information for Consumers.

(a) Each utility shall, upon request, give its consumers such information and assistance as is reasonable, in order that consumers may secure safe and efficient service; and upon request it shall render every reasonable assistance in securing appliances properly adapted and adjusted to the service furnished.

(b) Each utility shall adopt some means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters, or by a notice to the effect that the method will be explained at the office of the utility upon application. It is recommended that an exhibition meter be kept on display in each office maintained by a utility.

Rule 11. Meter readings and bill forms.

(a) Each service meter shall indicate clearly the cubic feet of gas registered by such meter. Where gas is metered under high pressure, or where the quantity is determined by calculation from recording devices, the utility shall supply the consumer with such information as will make clear the method by which the quantity is determined.

(b) Bills shall be rendered periodically, and they shall show the readings of the meter at the beginning and end of the period for which the bill is rendered, the date of the meter reading, the number of cubic feet of gas supplied, and the unit price. On all bills which include any other items than a definite unit price for gas, the other factors used in computing the bill shall be clearly stated, so that the amount may be readily computed from the information appearing on the bill.

Each bill subject to discount for prompt payment shall bear upon its face the date when the bill was mailed or left at the premises of the consumer, or the latest date on which it may be paid without loss of discount or incurring of penalty.

Rule 12. Change in character of service.

In case any substantial change is made by the utility in the gas pressure or other service conditions which would affect efficiency of operation or adjustment of appliances, the appliances of all consumers in the district affected shall be readjusted by the utility for the new conditions without charge.

TESTING

Rule 13. Definition of a cubic foot of gas.

When the gas itself is to be tested under these rules, a cubic foot of gas shall be taken to be that amount of gas which occupies the volume of one cubic foot when saturated with water vapor and at sixty degrees Fahrenheit and under a pressure of thirty inches of mercury. For purpose of measurement of gas to a consumer a cubic foot of gas shall be taken to be the amount of gas which occupies a volume of one cubic foot under the conditions existing in such consumer's meter as and where installed.

Rule 14. Testing facilities.

(a) Each utility shall, unless specifically excused by the Commission, provide such laboratory, meter-testing equipment and other equipment and facilities as may be necessary to make the tests required of it by these rules or other orders of the Commission. The apparatus and equipment so provided shall be subject to the approval of the Commission, and it shall be available at all times for the inspection or use of any member or authorized representative of the Commission.

(b) Each utility shall make such tests as are prescribed under these rules with such frequency and in such manner and at such places as is herein provided or as may be approved or ordered by the Commission unless otherwise directed by the Commission, the methods and apparatus recommended by the National Bureau of Standards in the latest edition of its Circular No. 48, "Standard Methods of Gas Testing," may be used.

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METER ACCURACY AND TESTING

Rule 15. Meter prover.

(a) Each utility furnishing metered gas service shall own an approved type of meter prover, preferably of not less than five cubic feet capacity, equipped with suitable thermometers and other necessary accessories, and it shall maintain such equipment in proper adjustment so that it shall be capable of determining the accuracy of any service meter to within one-half of one per cent. Each such meter prover shall be so placed that it will not be subjected to drafts or excessive temperature variations.

(b) The accuracy of all provers and methods of operating them will be established from time to time by a representative of the Commission. All alterations, accidents, or repairs which might affect the accuracy of any meter prover or the method of operating it shall be promptly reported in writing to the Commission.

Rule 16. Gas meter accuracy.

(a) Installation Test. Every gas service meter, whether new, repaired, or removed from the service for any cause, shall be in good order and shall be correct to within one per cent. when passing gas at approximately 25% rated capacity before being installed for the use of any consumer. Provided, however, that a utility which has less than one thousand consumers and which has no facilities for opening meter cases and adjusting the mechanism, may put a meter back into service if it is not found to be in error by more than one and one-half per cent. and appears otherwise to be in good order.

(b) Method of Testing. All tests to determine the accuracy of registration of any gas service meter shall be made with a suitable meter prover, and records of all regular or complaint tests shall be kept in the files of the utility.

(c) Special Meters. Any meter, the readings or record of which is based on the differential pressure in such meter or upon the measurement of any portion of the total gas delivered to a consumer, shall be tested for accuracy before installation in a manner satisfactory to the Commission.

Rule 17. Record of meters and meter tests.

(a) Whenever any gas service meter is tested the original test record shall be preserved, including the information necessary for identifying the meter, the reason for making the test, the reading of the meter upon removal from service, and the result of the test, together with all data taken at the time of the test in sufficiently complete form to permit the convenient checking of the methods employed and the calculations.

(b) A record shall also be kept numerically arranged, indicating for each meter owned or used by any utility the date of purchase, its identification, a record of the use, repairs, and tests to which it has been subjected, and its present location.

Rule 18. Prepayment meters.

No utility shall use prepayment meters geared or set so as to cause a rate or amount higher than would be paid if a standard type meter were used, except under such special rate schedule as may be approved by the Commission for this class of service.

Rule 19. Location of meters.

No consumer's meter shall be installed in any location where it may be unreasonably exposed to heat, cold, dampness, or other cause of damage, or in any unduly dirty or inaccessible location.

Rule 20. Periodic testing of meters.

(a) No gas service meter hereafter installed shall be allowed to remain in service more than five years from the time when last tested.

(b) During each period of twelve months after these rules take effect, until all meters now in service shall have been tested, each utility shall remove approximately twenty per cent of all meters now in service, those longest in service being removed first. Such meters shall not be replaced in service until tested and made to comply with the other provisions of these rules.

Rule 21. Meter testing on request of consumers.

(a) Each utility shall, at any time when requested in writing by a consumer upon reasonable notice, test the accuracy of the meter in use by him.

No deposit or payment shall be required from the consumer for such meter test except when a consumer requests a meter test within six (6) months after date of the installation

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or of the last previous test of this meter, in which case he shall be required by the utility to deposit with it, to cover the reasonable cost of such test, an amount not to exceed the following:

For each standard type gas service meter—

Not exceeding 10 lights capacity	\$1.00
Exceeding 10 lights but not exceeding 45 lights capacity	2.00
Exceeding 45 lights capacity	4.00

For any meter rated other than by lights capacity, including increased capacity meters commonly called "A" and "B" meters, the deposit shall be the same amount as is required for a meter of corresponding size rated by its lights capacity.

The amount so deposited with the utility shall be refunded or credited to the consumer, as a part of the settlement of the disputed account if the meter is found, when tested, to register more than three per cent. fast; otherwise he deposit shall be retained by the utility.

(b) A consumer may be present when the utility conducts the test on his meter, or if he desires, may send an expert or other representative appointed by him.

(c) A report giving the name of the consumer requesting the test, the date of the request, the location of the premises where the meter has been installed, the type, make, size, and serial number of the meter, the date of removal, the date tested, and the result of the test, shall be supplied to such consumer within a reasonable time after the completion of the test.

Rule 22. Adjustment of bills for meter error.

(a) Fast Meters. If on test of any gas service meter made by the Commission, as may be later authorized, or the utility under Rules 20 and 21, whether at the request of a consumer or not, it be found more than three per cent. fast, the utility shall refund to the consumer such percentage of the amount of his bills for the period of sixty days just previous to the removal of such meter from service—or for the time the meter was in service, not exceeding sixty days—as the meter shall have been shown to be in error by such test in excess of three per cent. Provided, however, that if the error was due to some cause, the date of which can be fixed, and which date is within the sixty days' period herein mentioned, the overcharge shall be computed back to but not beyond, such time. No part of any minimum service charge shall be refunded.

(b) Slow Meters. If on test of any gas service meter made by the Commission, as may be later authorized, or by the utility under Rules 20 and 21, whether at the request of a consumer or not, it be found more than three per cent. slow, the utility may collect from the consumer the amount estimated to be due from the consumer for gas used, but not charged for in bills rendered not to exceed the sixty days previous to removal of the meter.

HEATING VALUE REQUIREMENTS AND TESTS

Rule 23. Calorimeter equipment and laboratory.

(a) Each utility selling more than ten million cubic feet of manufactured gas per year shall provide and maintain a calorimeter of a type approved by the Commission, and all necessary accessories therefor.

(b) The calorimeter equipment shall be installed in a suitable testing station, the location of which testing station shall be selected by the utility and approved by the Commission.

(c) The accuracy of all calorimeters, as well as the method of making heating-value tests, shall be subject to the determination and approval of the Commission or its representative.

Rule 24. Heating value tests.

(a) Each utility maintaining a calorimeter testing station shall there determine the heating value of the gas supplied to its consumers at least once each day, Sundays and holidays excepted, unless the sales of the utility in the community or communities for which this station is to serve are less than fifty million cubic feet of gas per year, in which case the heating value of the gas shall be determined on not less than three days each week.

(b) Each utility making heating-value determinations shall adopt, subject to the approval of the Commission, a standard form for recording the results of each such test. Each determination of heating value shall be recorded originally upon the form adopted for that purpose, and such forms shall be retained as a permanent record.

Rule 25. Heating value requirements.

(a) **Average. Requirements.** Each utility supplying manufactured gas shall maintain the monthly average heating value of such gas at any point within one mile of the manufacturing plant at not less than 540 British thermal units gross per cubic foot. Provided, however, that in the case of gas produced in the by-product coke-oven process, or in the case of other good and sufficient reason any utility finds it impracticable to manufacture gas of the heating value aforesaid, it shall file a statement with the Commission clearly setting forth all pertinent facts, and the Commission, after investigating may by special order fix such lower average heating value standard as may by it be deemed proper for said utility.

To obtain the monthly average heating value of a gas the results of all tests of heating value made on any day during the calendar month shall be averaged, and the average of all such daily averages shall be taken as the monthly average.

In determining the B. T. U. content, all measurements shall be corrected to 60 degrees F. and 30" barometer.

(b) **Maximum and Minimum Limits.** Heating value of the gas shall be maintained with as little deviation as practicable, and to this end the average total heating value of any day should not exceed or fall below by more than thirty British thermal units the monthly average standard herein fixed, or otherwise fixed by special order of the Commission for a particular utility.

(c) Where manufactured gas is delivered to the mains under a pressure in excess of five pounds per square inch, the heating value may be determined before compression.

(**Note.** Any statement published by the utility as to the average heating value of the gas supplied should indicate that it was measured under or corrected to standard conditions, i.e., at 60 degrees F. and under a pressure of 30" of mercury.)

PURITY REQUIREMENTS AND TESTS

Rule 26. Purity requirements.

(a) **Hydrogen Sulphide.** All manufactured gas distributed in this State shall not contain more than a trace of hydrogen sulphide. This gas shall be considered to contain not more than a trace of hydrogen sulphide if a strip of white filter paper moistened with a solution containing 5% by weight of lead acetate is not distinctly darker than a second paper freshly moistened with the same solution after the first paper has been exposed to the gas for one minute in an apparatus of approved form through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging direct from a jet upon the test paper.

(Such test papers gradually become discolored by exposure to the air, and it is not common practice to preserve them. It is, however, possible to preserve the color by applying a thin white shellac varnish to the paper after it has become entirely dry.)

(b) **Total Sulphur.** All manufactured gas distributed in this State shall contain in each one hundred cubic feet not more than thirty grains of total sulphur.

(c) **Ammonia.** All manufactured gas distributed in this State shall contain in each one hundred cubic feet not more than five grains of ammonia.

Rule 27. Test of purity.

Each utility supplying manufactured gas shall daily test the gas, leaving its holders for the presence of hydrogen sulphide in the manner above specified.

(For apparatus required and methods of testing see Bureau of Standards Circular No. 48, "Standard Methods of Gas Testing.")

Each utility selling more than one hundred million cubic feet of manufactured gas per year shall provide and maintain such apparatus and facilities as are necessary for the determination of total sulphur and ammonia in the gas; and each such utility shall periodically (preferably semi-monthly) determine the amount of total sulphur and ammonia in the gas distributed by it, and shall keep a record of the results of all such tests, as provided for in Rule 4; *Provided, however*, that any such utility supplying only water gas or oil gas, or mixtures of these, shall not be required to provide apparatus for or make determinations of the amount of ammonia, or total sulphur, except when ordered by the Commission.

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GAS PRESSURE REQUIREMENTS

Rule 28. Gas pressure limits and allowable variation.

(a) Maximum and Minimum Limits. The pressure of manufactured gas supplied by any utility, as measured at the outlet of the utility's service pipe, to any consumer, or in the case of high pressure systems at the outlet of the house governor should be maintained as uniform as practicable, and it should never be less than one and one-half inches nor more than eight inches of water column pressure except as the consumer may request in writing the maintenance of some higher pressure when the maintenance of some higher pressure lies within the power of the utility.

(b) Allowable Variation. Between the hours of 5 a.m. and 10 p.m. the pressure of the gas at the outlet of the utility's service pipe, or house governor, to any consumer shall never vary by more than the following amounts, viz.:

Min. pressure maintained	Max. pressure variation permissible
1½ to 3 inches	3 inches
3 to 4 inches	3½ inches
over 4 inches	4 inches

(c) No utility shall be deemed to have violated the preceding paragraph of this rule if it can be shown to the satisfaction of the Commission that the variations, in gas pressure occurring, were due to unforeseen demand or to temporary conditions beyond the control of the utility (change in these hours may be necessary in some localities to conform to the habits of the people in the use of gas).

(b) No utility subject to relatively very heavy demands for house heating purposes only a few days each year shall be deemed to have violated the preceding paragraph of this rule, if it can be shown to the satisfaction of the Commission that the service rendered on such days met reasonably the needs of the consumers, and that no inconvenience was caused them by reason of pressure variation.

(e) No utility shall be deemed to have violated any stipulation of this rule with respect to individual cases if it can be shown to the satisfaction of the Commission that in any such individual case the service lines or any pipe lines on consumers' property or beyond the street curb are of such size as to render the maintenance of the pressures and pressure variations impracticable.

Rule 29. Pressure testing equipment.

(a) Each utility shall maintain on its distribution system in each city in which it supplies gas at least one recording gas pressure gauge for each fifty miles of mains, or fraction thereof, and no utility shall maintain less than two such recording-pressure gauges, of which one should be portable.

(b) Each utility shall regularly make record within such recording gauges of the pressure in various parts of its distribution system. The charts or records thus obtained shall bear the date and place where the pressure was taken and shall be filed as a permanent record.

General Provisions.

Rule 30. Deposits from consumers and guarantee payment of bills.

(a) Each utility may require from any consumer, or prospective consumer, a cash deposit or other acceptable security intended to guarantee payment of current bills. Such required deposit or other security shall not exceed the amount of an estimated sixty days' bill of such consumer. Interest shall be paid by the utility upon cash deposits at the rate of 6% per annum, payable upon the return of the deposit, for the time such deposit was held by the utility, and the consumer was served by the utility; provided such period was not less than six months. If security other than cash is tendered by consumer, and such security is not acceptable to the utility, then the consumer may submit to the Commission security offered and the action of the Commission shall be binding on both parties.

(b) Each utility having on hand cash deposits from consumers or hereafter receiving deposits from them, shall keep records to show: (1) the name of each consumer making such deposit, (2) the premises occupied by the consumer when the deposit was made, (3) the amount and date of making the deposit, and (4) a record of each transaction concerning such deposit such as payment of interest, interest credited, etc.

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(c) Each utility shall issue to every consumer from whom a deposit is received a non-assignable receipt.

(d) Each utility shall provide reasonable ways and means whereby a depositor who makes application for the return of his deposit or any balance to which he is entitled, but is unable to produce the original certificate of deposit or receipt, may not be deprived of his deposit or balance.

Rule 31. Discontinuance of service for violation of rules or non-payment of bills.

(a) No utility shall discontinue the service to any consumer for violation of its rules or regulations, or for non-payment of bills without first having diligently tried to induce the consumer to comply with its rules and regulations or to pay his bills.

Service shall actually be discontinued only after at least twenty-four hours' notice of such intention shall have been given to the consumer by the utility. Provided, however, that where fraudulent use of gas is detected or where a dangerous condition is found to exist on the consumer's premises, the gas may be shut off without notice in advance.

Rule 31. (b) Whenever the supply of gas is turned off for violation of rules or regulations, non-payment of bills or fraudulent use of gas, the utility may make a reasonable charge for the cost incurred in cutting the gas off and turning it on again.

Rule 31. (c) Where a consumer has been required to make a guarantee deposit this shall not relieve consumer of the obligation to pay the service bills when due, but where such deposit has been made and service has been discontinued on account of non-payment of bill, then in such event unless consumer shall, within forty-eight hours after service has been discontinued, apply for reconnection of service and pay the account, then in such event the utility shall apply the deposit of such consumer toward the discharge of such account and shall as soon thereafter as practicable, refund the consumer any excess of the deposit.

Rule 31. (d) No electric and/or gas and/or water utility company shall be required to furnish its electric and/or gas and/or water service to any applicant, who at the time of such application, is indebted under an undisputed bill to such utility company for service, either gas or electric or water, theretofore furnished such applicant.

Rule 32. Replacement of meters and changes in location of service.

(a) Whenever a consumer requests the replacement of the service meter on his premises, such request shall be treated as a request for the test of such meter, and as such shall fall under the provisions of Rule 20.

(b) Whenever a consumer moves from the location where gas is used by him and thereby requires the disconnecting and connecting at a new location of the gas supply, and the same work has been done for him within one year preceding, the utility may make a charge.

Rule 33. Extent of system on which utility must maintain service.

Each gas utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient and proper condition all of the facilities and instrumentalities used in connection with the regulation, measurement and delivery of gas to any consumer up to and including the point of delivery into the piping owned by the consumer.

Rule 34. Maps.

(a) Suitable maps or records shall be kept on file showing the size, character, and location of each street main, district regulator, street valve, and drip.

Rule 35. Street main extensions.

(a) Each utility shall adopt rules, subject to the approval of the Commission, under which it will, upon written request for services by a prospective consumer, or a group of prospective consumers located in the same neighborhood, make the street main extension necessary to give service and furnish service-pipe connection or connections.

Rule 35. (b) When a would be customer or customers of a public utility, either gas, electric, or water, make application for service at a point not immediately adjacent to a service line of a utility, if the requirement of such service is reasonable, it shall be rendered under reasonable terms and conditions determined by the facts of each case.

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Rule 36. Rate schedule, rules and regulations.

Copies of all schedules of rates for service, forms or contracts, charges for service connections and extensions of mains, and of all rules and regulations covering the relations of consumer and utility, shall be filed by each utility in the office of the Commission. Complete schedule, contract forms, rules and regulations, etc., as filed with the Commission, shall also be on file in the local offices of the utility and shall be open to the inspection of the public.

No schedules of rates, contract forms nor rules and regulations shall be changed until after proposed change has been approved by the Commission.

Rule 36-C. All rates, tolls, charges and fares proposed to be put into effect by any public utility under the regulation of this Commission, shall be first approved by this Commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law.

Rule 36-D. No rate, toll, charge, fare nor service of any public utility under the regulation of this Commission shall be deemed approved nor consented to by the mere filing of a schedule or other evidence thereof in the offices of the Commission; but such approval and consent to be good must be actually and affirmatively made.

Telegraph Service.

Pursuant to § 58-202, S. C. Code of 1952.

(Filed Secretary of State's office November 13, 1941.)

No. 1. Independent telegraph offices not to be closed without consent of the commission.

No independent telegraph office where messages are received and transmitted for the public shall be discontinued or abolished without first obtaining the consent of the Public Service Commission, upon an application duly filed by the said company desiring such discontinuance, wherein shall be stated the reason therefor; it being understood that this refers to the main office, and does not include branches of the main office at any place. Such branches may be opened or closed as the exigencies of the business may require.

No. 2. Annual report.

On or before March 1st of each year, all telegraph companies operating in South Carolina shall make to the Public Service Commission an annual report of their operations in the State, including receipts and expenses, for the year ending December 31st, preceding.

No. 3. Delivery of messages.

All electric telegraph companies operating in South Carolina shall deliver, free of delivery charges, all telegraph messages to all points within one mile (1 mile) of any telegraph office, or within the incorporated limits of any city, or town, in which a telegraph office is located, whichever is the greater distance from such telegraph office.

Telephone Service.

Pursuant to § 8229 of the 1942 Code of Laws of South Carolina which has been repealed, but see § 58-353, S. C. Code 1952.

(Filed Secretary of State's office January 7, 1943.)

Rule 1. Definition.

In the interpretation of these rules, the word "Commission" shall be taken to mean the South Carolina Public Service Commission; the word "telephone company" shall be taken to mean any person, firm or corporation engaged in the business of rendering a general telephone service for hire to subscribers within the State; and the word "subscriber" shall be taken to mean any person, firm, association, corporation, municipality or any sub-division or agency of the State or of the Federal Government served by any such telephone company.

Rule 2. Application of rules.

(a) These rules shall apply to any person, firm or corporation which is now or may hereafter be engaged in the business of rendering a general telephone service for hire to subscribers within the State of South Carolina.

(b) These rules are intended to insure reasonably adequate telephone service and to protect the telephone companies and telephone subscribers from unreasonable demands.

(c) In any case where compliance with any of these rules would introduce unusual difficulty or imposes an undue burden upon either the telephone companies or telephone subscribers, such rule may be temporarily waived or indefinitely suspended by the Commission.

Rule 3. Obligation of the Telephone Company.

(a) It shall be the obligation of such telephone companies operating in South Carolina, dependent upon their ability to procure and retain suitable facilities and rights for the construction and maintenance of the necessary circuits, to furnish reasonably adequate telephone service to telephone subscribers in the area or territory in which it operates. Such service is to be rendered according to lawfully established rates and charges for the specific territory involved.

(b) Telephone companies offer the use of their facilities for communications between their customers and do not offer or undertake, and shall not be required, to accept messages for transmission or to transmit messages.

Rule 4. Telephone equipment and facilities.

Telephone equipment and facilities are furnished by the telephone companies for the use of their subscribers and the subscribers' employees, agents or representatives or members of the subscribers' domestic establishment, except for public or semi-public pay station service, or in cases where arrangements have been made with the telephone company for joint use of service. The subscriber shall not use or permit the use of the equipment or facilities for any purpose not contemplated in the contract for service. All equipment and facilities furnished by a telephone company shall remain the property of the company and may not be disconnected, moved or removed except upon the written consent of the company.

Rule 5. Telephone exchanges.

A telephone exchange is a central office or group of central offices together with the subscribers' stations and lines connected thereto forming a local system furnishing telephone intercommunications between subscribers within a specific exchange area.

Rule 6. Classification of Areas.

A. Exchange Service Area.

The exchange service area is that area within which a telephone company furnishes local telephone service from a central office or a group of central offices constituting a local telephone exchange. The exchange service area is divided as follows:

(1) Base Rate Area

The base rate area is that part of the exchange service area within which a telephone company undertakes to furnish certain basic classes of service at rates as provided in its tariffs without the assessment of additional charges based on distance. Rates for such service of the same classification are common to all subscribers.

(2) Area Outside Base Rate Area

Outside the base rate area, by reason of the greater distances involved and the sparseness of development, service at base rates is not furnished because of the wide variations in costs. However, in such an area such service may be furnished at base rates with the addition of mileage charges based on the distance beyond the boundary of the base rate area. Multi-party classes of service, with mileage charges as applicable, may be furnished in these areas, although for operating reasons such service is not required to be furnished within the limits of the base rate area.

(a) Rural Service Area

Beyond the area immediately adjacent to the base rate area, but within the exchange service area, there are sections where it is not generally feasible to furnish basic classes of service. In such sections service may be furnished by means of rural line stations or exchange service stations (farmers' stations).

B. Toll Station Areas.

Beyond the exchange service area telephone service may be furnished on a toll basis through the establishment of toll stations. Toll stations may be used as switching points

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for the transfer of messages between service stations (farmers' stations) and the telephone company's toll stations. The extension of a telephone company's plant to these outlying places is determined by the present or potential demand for service and is necessarily the subject of special consideration in each case.

Rule 7. Toll telephone service.

Toll telephone service is telephone communication between exchange service areas or toll rate centers as distinguished from local exchange service.

Rule 8. Application for telephone service.

Applicants for telephone service may be required to sign an application form furnished by the telephone company.

Rule 9. Classification of exchange telephone service.

There shall be two main classifications of exchange telephone service.

(a) Business service is that furnished in offices, stores, factories, mines and all other places of a business nature, and at all other locations where the subscriber's primary use of the service is for business purposes.

(b) Residence service is that furnished in residences or private apartments where service is confined to the domestic use of the subscriber and his household and where business listings are not employed.

Rule 10. Individual line service.

Individual line service is a classification of exchange service furnished under tariff provisions, which provides that only one main station shall be served by the circuit connecting such station with the central office.

Rule 11. Party line service and service stations.

A. Party Line Service.

(1) Two party line service is a classification of exchange service furnished under tariff provisions, which provides that not more than two main stations may be served by the circuit connecting such stations with the central office.

(2) Four-party line service is a classification of exchange service furnished under tariff provisions, which provides that not more than four main stations may be served by the circuit connecting such stations with the central office.

(3) Multi-party line service is a classification of exchange service furnished under tariff provisions which provides that more than four stations may be served by the circuit connecting such stations with the central office.

(a) Rural line service is a class of multi-party line service furnished in rural areas which provides that eight or more main stations, depending upon technical equipment limitations of the particular central office, may be served by the circuit connecting such stations with the central office.

(4) When party line service is furnished, the telephone company may establish and furnish service to other subscribers on the line consistent with the maximum limitation of the particular classification of service involved. The telephone company may cancel any party line contract upon thirty days' notice, whenever in the judgment of the company the use of the service by the subscriber holding such contract is such as to interfere with the reasonable use of the service by other subscribers connected with the same line.

B. Service Stations.

(1) Farmers or others located in sparsely settled rural communities where a telephone company does not undertake to provide facilities for rendering telephone service may, in joint association, enter into an agreement with the telephone company in accordance with tariff provisions to connect their stations with a central office or toll station of the telephone company. Stations so connected are called service stations (farmers' stations).

(2) The number of stations permitted on a service station line is governed by the technical equipment limitations in each specific case and are further limited to such number, as in the judgment of the telephone company, will not adversely affect the service. Except in special cases, contracts for this type of service will not be accepted where the circuits extend more than twelve miles from the central office or toll station with which such circuits are to be connected.

(3) In connection with service stations connected with a central office or toll station, the telephone company will provide the pole line and circuits from the central office to an agreed upon junction point. Pole line and circuits beyond the agreed upon junction point

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are furnished, owned, and maintained by the subscribers, except that if facilities are available, circuits may be leased from the telephone company at prescribed tariff rates. All leased circuits are maintained by the telephone company, except that any expense incurred by the telephone company in the maintenance of such leased circuits because of the condition of the subscriber's portion of the line, is chargeable to the subscriber.

Rule 12. Payments for service.

The subscriber shall pay monthly in advance or on demand all charges for exchange telephone service and equipment and shall pay on demand all charges for toll telephone service. The subscriber assumes responsibility for all charges for exchange service and toll messages originating at the subscriber's station and for all toll messages received at the subscriber's station on which the charges have been reversed with the consent of the person called.

Rule 13. Deposits to guarantee payment of bills.

(a) Each telephone company, in its discretion, may require from any subscriber or applicant for telephone service a cash deposit to guarantee payment of bills. Payment of current bills in advance shall not be considered as deposits. All such deposits if held by the telephone company for a period of 6 months or more shall bear interest at the rate of 6% per annum, payable

(1) On demand of the depositor at any time but not oftener than once a year.

(2) Upon application of the depositor for discontinuance of service.

(3) Or at the end of each 5 year period after July 1, 1935, if demand for payment of interest or discontinuance of service has not been previously made. If such deposit is held until discontinuance of service, such deposit and accrued interest, less any amounts then due the telephone company, is, upon such discontinuance, returnable to the subscriber.

(b) Each telephone company having on hand cash deposits from subscribers or hereafter receiving deposits from them shall keep records to show:

(1) The name and address of each subscriber making such deposit.

(2) The amount of the deposit and the date on which it was made, and

(3) A record of each transaction concerning such deposit, such as payment of interest, interest credited, etc.

(c) Each telephone company shall issue to every subscriber from whom a deposit is received a receipt which shall be nonassignable.

(d) Each telephone company shall provide reasonable ways and means whereby a subscriber, who makes application for the return of his deposit or any balance to which he is entitled, but who is unable to produce the original certificate of deposit or receipt, may not be deprived of his deposit or balance.

(e) The fact that a deposit has been made shall in no way relieve the applicant or subscriber from complying with these rules and regulations as they relate to advance payments and to the prompt payment of bills on presentation, nor shall it constitute a waiver or modification of these rules and regulations as they govern the discontinuance of service for nonpayment of any sums due the telephone company.

(f) No telephone company shall be required to furnish telephone service to any applicant who at the time of such application is lawfully indebted to such telephone company for service theretofore furnished such applicant.

Rule 14. Construction costs.

Where telephone service is desired by a subscriber at a location where facilities are not available and requiring unusual or excessive construction costs, the telephone company may require such subscriber to pay a part or all of such costs as may be determined under the circumstances for each individual installation. Under these circumstances the telephone company shall be permitted to enter into an agreement with a subscriber whereby the subscriber at his own expense may furnish and maintain, in accordance with standard specifications, the portion of pole line and circuit from his station location to an agreed upon point of connection with the telephone company's system. The subscriber shall, also, bear the cost of installing the station equipment. The station equipment will be owned and maintained by the telephone company, except that the company may require the subscriber to bear the maintenance expense incurred because of the inaccessibility of the station or because of the distance of the station's location from the point of connection. Telephone service furnished under these conditions is subject to the tariff rates and provisions applicable to the particular classification of the service involved.

RULES AND REGULATIONS

The telephone company will not be held responsible for any loss or damage, nor for any impairment or failure of the service, arising from or in connection with the use of subscriber owned facilities and not caused solely by the negligence of the telephone company.

Rule 15. Access to premises.

The obligation of the telephone company to render telephone service shall be dependent upon the employees or representatives of the telephone company having safe access to the premises of the subscriber at all reasonable hours for the purpose of inspecting, repairing or removing any part of the telephone company's equipment, apparatus and lines located on the premises of the subscriber. Upon failure to have access to the subscriber's premises for the above stated purposes, the telephone company may discontinue service without liability for any claim on the part of the subscriber.

Rule 16. Maintenance of plant and equipment.

(a) Each telephone company shall maintain its plant, equipment and other facilities at all times in a reasonably adequate and serviceable condition.

(b) The telephone equipment, apparatus and lines furnished by the telephone company shall remain the property of the telephone company and shall be carefully used by the subscriber, and no instrument, appliance or device of any kind not furnished by the telephone company shall be attached to or in any way used in connection with such telephone equipment, apparatus and lines, either directly or indirectly, by induction or otherwise, except upon the written approval of the telephone company. In case any instrument, apparatus or device of any kind other than that furnished by the telephone company, or as excepted above, is attached to or connected with any part of its properties, the telephone company shall have the right to remove such instrument, apparatus or device and to suspend or disconnect service without any claim on the part of the subscriber.

Rule 17. Explosive atmospheres and other hazardous locations.

No telephone company shall be required to install or maintain any of its apparatus or equipment in explosive atmospheres, or at outdoor or other locations which, in its judgment, are not suitable for the location of its service and facilities.

Rule 18. Requests for service connection.

Each telephone company shall make reasonable connections upon request where adequate protection is afforded, but shall not be required to furnish any particular class of service to any particular location nor to extend its plant to remote sections where such extension is not warranted by public necessity. Such service connections and plant extensions shall be subject to the rules and regulations by which each telephone company undertakes to furnish service in the area in which it operates and shall be made only when the revenues to be derived therefrom warrant the expenditure of the amount necessary to make such connections or extensions.

Rule 19. Discontinuance of service for violation of rules or nonpayment of bills.

In the event of abandonment of the station, the nonpayment of any sum due for exchange, toll or other services or any other violation by the subscriber of rules and regulations applying to the subscriber's contract for the furnishing of telephone service, the telephone company may, without notice, either

- (a) Suspend service until all violations have ceased,
- (b) Terminate the subscriber's contract without suspension of service, or
- (c) Following a suspension of service, sever the connection and remove its equipment from the subscriber's premises.

(d) Where a telephone subscriber owns any part of the telephone line over which he receives service, said subscriber's part of said line shall be maintained in a reasonably serviceable condition by the subscriber and at his expense, and should the subscriber allow the physical condition of the part of the telephone line owned by him to become such that it interferes with the operation of any part of the telephone company's lines or equipment, the telephone company may disconnect such line until the necessary repairs have been made. The subscriber, however, shall be notified that his line has been disconnected and the reason therefor.

Rule 20. Restoration of service.

The telephone company may restore or re-establish service which has been suspended or discontinued for nonpayment of charges without payment of all charges due. Such

restoration or re-establishment shall not be construed as a waiver of any rights to suspend or discontinue such service or any other service for nonpayment of any such or other charges due and unpaid or for the violation of the rules and regulations applying to the subscriber's contract for the furnishing of telephone service, nor shall the failure to suspend or discontinue service for nonpayment of any past due account or accounts operate as a waiver or an estoppel to suspend and discontinue service for nonpayment of such account or any other past due account.

Rule 21. Approval of rates and charges.

All rates, tolls and charges for telephone service generally offered to the public hereinafter proposed to be put into effect by any telephone company under the regulation of the Commission shall be first approved by the Commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law, and no rate, toll or charge after approval by the Commission shall be changed or modified without the consent of the Commission.

Rule 22. Reports to the Commission.

(a) Each telephone company operating in the State shall make an annual report to the Commission giving such information as the Commission may reasonably direct and in such detail as the size of the company may warrant.

(b) Each telephone company shall at such times and in such form as the Commission shall prescribe report to the Commission such other information relative to the operations of the telephone company as the Commission may reasonably require.

(c) Each telephone company shall report to the Commission any accident happening in connection with the operation of its property or facilities whereby any person shall have been killed or whereby any damage to telephone property shall have been caused which seriously affected a major portion of its service. Such information shall be kept confidential by the Commission and shall not be accessible for public inspection.

Rule 23. Complaints.

Each telephone company shall make a full and prompt investigation of all complaints regarding service or rates and charges made to it by its subscribers, either directly or through the Commission.

Rule 24. Rates, charges, tariff applications and practices.

Each telephone company shall file with the Commission copies of its rates, charges, tariff applications and practices relating thereto, approved by the Commission, and a copy of such schedules of rates and charges applicable to a particular exchange shall be maintained on file in the business office of that particular exchange and shall be available for public inspection during business hours.

Rule 25. These Rules and Regulations shall in no way preclude the Public Service Commission of South Carolina from altering or amending them in whole or in part as provided by law, neither shall they preclude the right of any telephone company from filing with the Commission for its consideration and approval additional or revised tariff applications and provisions from time to time as the need therefor may arise. Furthermore, these Rules and Regulations shall in no way relieve any telephone company from performing its duties to the public under the laws of this State, nor shall they be construed as denying to any telephone company its charter or lawful rights.

Rule 26. When a telephone company is requested to handle a long distance, or toll, telephone call and the toll circuits from such telephone exchange are busy, a record of the request shall be made by the originating exchange if it is manually operated or has a toll operator on duty, or by the exchange it dials for toll service if the originating exchange is dial operated, and the calling number notified as soon as a toll circuit is available.

Rule 27. Each time a telephone company publishes a new telephone directory for any of its exchanges a copy of such directory shall be furnished to The Public Service Commission within twenty days.

(Rules 26-27 filed Secretary of State's office December 6, 1946.)

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4. Payments.

At the time of making application for connection or service, the applicant must make payment to the company of the fees, deposits, or rates as the case may be, as hereinafter set forth for the service applied for.

5. Connections.

The Water Company will furnish and maintain at its own cost, all necessary fittings, pipes, and appliances, including all meters and meter boxes, to deliver water to the consumer's pipe line, at a point just inside the curb line on the street, and just outside the property line in alleys or other public places; all such fittings, pipes appliances, meters and meter boxes shall remain the property of the Water Company, and shall at all times be accessible to it, and under its control.

The service line from the curb box or meter to the consumer's premises shall be laid and maintained by the applicant at his own cost. The line shall be of ample size, of standard weight and quality, and all cut-offs, valves, fixtures, and appliances furnished by the consumer shall be maintained in good order and condition.

6. Leaks.

All leaks in the service or any other pipe, or fixture on the premises of the consumer shall be immediately repaired. Upon failure to repair any such leak, the service may be discontinued until repairs are made.

7. Inspection.

All pipes, meters and fixtures shall at all reasonable hours be subject to inspection by the Water Company, or its duly authorized agents.

8. Damages.

The Water Company shall in no event be responsible for maintaining any service line owned by the consumer nor for damages done by water escaping therefrom, nor for defects in lines, or fixtures, on the property of the consumer. The consumer shall at all times comply with all regulations of the South Carolina Railroad Commission, of the municipality, and of the Water Company, relating to the service lines, and shall make all changes in his line required on account of change in grade, or otherwise.

All injury to service pipes or street mains caused by the careless or negligent work, or improper filling of excavations, shall be chargeable to the persons causing such injury, and the expense of repairing same shall be recovered from such person.

9. Consumers.

A "consumer" is defined to be a "person, firm or corporation taking water through a single service pipe for a single building or business," and a minimum or flat charge shall be paid by each consumer whether there is a separate meter or service pipe for each consumer or not. *Provided, However:*

(a) That the owner of a single building used as a dwelling or apartment house, and occupied by one or more families, may connect such building or apartment house, if not already connected with the mains of the Water Company and be served by a single service line for which one minimum charge shall be paid, in which case the application for service shall be made by the owner, or his duly authorized agent or tenant, and the bills for water shall be paid by the owner.

(b) Each separate store or place of business shall be considered a separate building and shall pay a separate minimum.

(c) Where a building is occupied as to the ground floor for business purposes, and as to upper floors for offices or for dwellings, if the application is signed and the water bills paid by the owner, all such upper floors shall be considered as one service, and one minimum charge shall be paid and collected for such upper floors, provided a separate service is installed.

(d) Where two or more families or places of business, or offices in a single building are supplied with water through a single service line, and the owner of the building either in person or by his duly authorized agent fails or refuses to sign an application for service, or fails to pay the bills for water when due, or who fails to abide by all the rules and regulations of the company, the service may be discontinued; but no such action involving the shutting off of the water supply of an innocent consumer shall be taken without first affording the tenant of the premises opportunity to make a new application for a supply of water through a separate service line or meter.

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(e) Where two or more buildings or two or more families or establishments in a single building, are supplied by a single service line, with the approval of the Water Company, and where the owner or occupants of such buildings or such families or establishments desire to contract separately for water furnished the owner shall first arrange the several house connections, or the plumbing in such a way that a separate meter and stop and waste cock with seal approved by the Water Company, can be placed upon the supply line of each of said consumers, thereupon the Water Company shall install separate connections for each consumer making application therefor. In such cases, a separate minimum charge shall be assessed against each consumer.

(f) Where a servant's house is located on the same lot as the dwelling and such servant's house is occupied by the servants of the family occupying the main dwelling and where a single service pipe supplies both the dwelling and the servant's house and the owner or tenant of the dwelling is responsible for the entire water bill, the company will only assess a single minimum charge on the dwelling and none against the servant's house.

10. Transient consumers.

In the case of transient consumers or consumers taking water for less than months, the Water Company may make a charge of not more than \$1.00 to cover reconnection with its mains and installation, reading and removing meter and charge for water consumed at regular meter rates. The Water Company may require a deposit to be made in advance by such temporary or transient consumers to cover the cost of making the connection and the probable water bill.

11. New services.

Upon installation of any new service the Water Company may make a charge of not more than to cover the cost of making a connection with its mains, installing the meter and charge for water consumed at regular meter rates. The Water Company may require a deposit to be made in advance by such consumers to cover the cost of making the connection and the probable water bill.

12. Stop and waste.

A stop and waste cock or cut-off valve must be placed in the pipe line on the premises of the consumer to be used in case of break, or other necessity, whereby pipes to be repaired can be cut off without the necessity of using the street corporation cut off.

13. Meters.

All meters will be furnished by the Water Company and shall remain its property and be accessible to and subject to its control. They shall be conveniently located at a point approved by the Water Company, so as to control the entire supply, and when located on premises of consumer a proper place and protection therefor shall be provided by consumer.

(a) Where water is furnished by a flat rate, the Water Company shall have the right to install and maintain a meter to determine the quantity supplied, and the consumer shall provide a suitable location therefor. The Water Company shall have the right to continue the use of the meter, and furnish water by meter rate only and consumer shall thereafter pay the meter rate schedule. The Water Company also reserves the right to change from flat-rate service to metered service at any time.

(b) Meters will be maintained by the company, so far as ordinary wear and tear are concerned, but damage due to freezing, where located inside the building or cellar, or due to hot water, or external causes, shall be paid for by the consumer.

The consumer shall notify the Water Company of any injury to or the non-working of the meter, as soon as it comes to his knowledge.

(c) When water is furnished by meter, the quantity recorded by it shall be conclusive on both the consumer and the Water Company, except when the meter has been found to be registering inaccurately or has ceased to register. In the latter case the quantity may be determined by the average registration of the meter when in order.

(d) In case of a disputed account, involving the accuracy of a meter, such meter shall be tested upon request of the consumer, in conformity with the provisions of the rules and regulations of the South Carolina Railroad Commission. In the event that the meter so tested is found to have an error in registration of three (3) per cent or more, the bills will be increased or decreased accordingly, but in no case shall such a correction be made for more than sixty (60) days.

14. Discontinuance of service.

Service under any application, including public fire protecting, and by any other municipal use, may be discontinued for any of the following reasons:

(a) For misrepresentation in application as to property or fixtures to be supplied, or the use to be made of the water supply.

(b) Under flat-rate service, for adding to said property or fixtures or for changing the use to be made of the water supply, without notice to and the consent of the Water Company.

(c) For molesting any service pipe, meter, curb-stop-cock, seal, or any other appliance of the Water Company controlling or regulating the water supply.

(d) For neglecting to make or renew advance payments, or for non-payment of any account for water supplied or water service, or fire protection, or of any scheduled fee or charge as required by Paragraph 21 of these rules and regulations.

(e) For violation of any rules of the company.

(f) In case of vacancy of premises.

15. Water will be turned off of any premises, upon the written order of the consumer, without in any way affecting the existing application.

16. No water fixture or appliance in connection therewith will be considered cut off until it is discontinued so that it cannot be used again, or is sealed in a manner satisfactory to the Water Company.

17. No plumber, owner, or other unauthorized person shall turn the water on or off at any corporation stop or curb stop, or disconnect or remove the meter without the consent of the Water Company.

18. As necessity may arise in case of break, emergency or for other unavoidable cause, the Water Company shall have the right to temporarily cut off the water supply, in order to make necessary repairs, connections, etc. In such a case the Water Company shall not be liable for any damage or inconvenience suffered by the consumer; or any claim against it at any time for interruption in service, lessening of the supply, inadequate pressure, a poor quality of water, and for any causes reasonably beyond its control.

19. The Water Company shall have the right to reserve a sufficient supply of water at all times in its reservoirs, to provide for fires and other emergencies, or may restrict or regulate the quantity of water used by consumers in case of scarcity, or whenever the public welfare may require it. No street or lawn sprinkling shall be done at times of water shortage; no street or lawn sprinkling shall be done by flat-rate users except by hose held in hand, or at any other time than from 6 A. M. to 8 A. M. and from 5 P. M. to 7 P. M. and sprinkling shall be discontinued during the period whenever an alarm of fire is rung.

20. Renewal of service.

When service has been discontinued, the same will be renewed under a proper application, when conditions under which the services were suspended, are corrected, and upon the payment of all charges provided in the schedule of rates or tariffs of the Water Company.

A consumer whose service has been discontinued at one residence or place of business will not have the right to require service to be renewed at another residence or place of business until all charges of the Water Company for water furnished have been paid, and its rules and regulations complied with.

Where water has been turned off for non-payment of a bill, or for any other valid reason, it shall not be turned on again until the consumer shall have paid a "turn on charge" of not more than \$1.00. The same charge shall be made for turning off water at the request of the consumer due to repairs on his premises, or to reported vacation or disuse.

21. Terms of payment.

Where no deposit is required by the Water Company minimum charges for meter rates and flat rates shall be due and payable in advance, either monthly or quarterly at the option of the Water Company. All meter charges over and above minimum charges shall be payable at the same time for service rendered during the preceding quarter or month as the case may be. Bills shall be delinquent ten days after the day of the month the monthly or quarterly charge may be due.

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22. Abatement and refunds.

Abatement or refund will be made of a portion of flat rate or minimum charges in the proportion that the period of vacancy of the premises bears to the entire period for which payment is due or has been made; provided, that no abatement or refund shall be made for fractions of a month, and that consumers who take service for a period less than six months will not be entitled to a refund or abatement.

23. General rules and regulations.

No abatement on meter bills will be made for leaks or for water wasted by damaged fixtures.

(a) No agent or employee of the Water Company shall have authority to bind it by any promise, agreement or representation in violation of these rules and regulations.

(b) No person except an employee of the Water Company duly authorized shall take water from any fire hydrant for any purpose except for fire purpose or for use of the fire department in case of fire, and water shall not be taken from a fire hydrant for sprinkling streets, flushing gutters, or sewers, or for any purpose except the extinguishment of fires, unless specially permitted in writing by the Water Company for the particular time and occasion.

(c) The rate fixed in the schedule to be paid for fire hydrants contemplates the use of a sufficient amount of water through said hydrants for a *bona fide* purpose of extinguishing fires, by or under the supervision of fire department employees or officials, and does not authorize the use of said hydrants and the water that flows through them by so called salvage companies or any other unauthorized person.

(d) No consumer will be allowed to furnish water to another person, except in cases of emergency, and then only for a limited time, or until such emergency shall have passed.

24. Bills and notices of the company relative to its business will be mailed or delivered to the consumer's last address as shown by the records of the company and failure to receive a bill shall not extend the time of payment of bill due.

25. The company may require all new consumers who desire both regular commercial service and fire protection service to install separate service lines, one to be used only for fire protection. The company may require all old consumers who now have only one service connection for combined commercial service and for fire protection to install separate lines, all expenses incurred in making such change to be paid for by the company. In cases where separate lines are installed, the consumer is not permitted to take water from the fire protection line except for the extinguishing of fires or for fire drills. Neither will the company permit an inter-connection to be made between the regular service line and the fire protection line.

Research, Planning and Development Board.

ADOPTED BY THE SOUTH CAROLINA RESEARCH, PLANNING AND DEVELOPMENT BOARD.

Pursuant to § 9-310, S. C. Code of 1952.

Conditions Under Which the State Iodine Label May Be Used.

(Filed Secretary of State's office May 7, 1940.)

1. All goods upon which the label can be placed must be of high quality, proper weight, and accepted appearance.

2. Cannors of South Carolina fruits and vegetables desiring to use the State Iodine Label may do so only when the high standard of quality is maintained and a payment of $\frac{1}{4}$ c per case is made to the Department of Agriculture, Commerce and Industries as a royalty for the use of the label.

Listed herewith are what are recognized as standard size cases each for canned vegetables and fruits.

96-8 oz. cans per case.

48 cans commonly known as 1's

24 cans commonly known as 2's

24 cans commonly known as 2½'s

24 cans commonly known as 3's

6 cans commonly known as 10's

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3. Packers and shippers of raw fruits and vegetables desiring to use the State Iodine Label may do so only when a high standard of quality is maintained and a payment of 1/10c per crate is made to the Department of Agriculture, Commerce and Industries for the use of the label.

Packers and shippers may have this label printed, together with their brand label, or the Commissioner of Agriculture, Commerce and Industries will furnish the labels at the actual cost of printing plus 1/10c for its use.

4. Creameries using the State Iodine Label on their butter will be required to maintain a high standard of quality and pay a royalty of 1/48 of a cent on each individual one pound carton of butter to the South Carolina Department of Agriculture, Commerce and Industries for the use of the labels.

The Commissioner of Agriculture, Commerce and Industries reserves the right to change or amend these conditions, or the amount charged for the use of the State Iodine Label without any notice whatsoever to anyone except that a change in rules shall not effect any permission for specific order of labels in specific number theretofore granted by the Commissioner.

School Book Commission, State.

ADOPTED BY THE SOUTH CAROLINA STATE SCHOOL BOOK COMMISSION

Pursuant to § 21-479, S. C. Code of 1952.

(Filed Secretary of State's office April 21, 1937, except § 13 of Article III.)

Article I—Responsibilities

Section 1. Adopted books.—The state board of education has prescribed the uniform course of study, adopted the basal and supplementary textbooks, and signed contracts with publishers for the use of these books. Therefore, the prescribed basal and supplementary textbooks shall be used as prescribed by the said course of study for the rental system established by the South Carolina rental textbook law of the General Assembly of South Carolina.

Section 2. Property of the State.—Books under the rental system shall become the property of the State when issued to children and/or teachers and/or marked as the property of the State by an authorized depository or agent.

Section 3. Custodians.—The school trustees of each district are designated under the law as the legal custodians of the books. As legal agents of their respective districts, the trustees acting for the district are accountable for and responsible to the State for the value of all books issued to their districts by authorized agents.

Article II—Care of Books

Section 1. Parties authorized.—The trustees (Article I, Section 3) are responsible for the care of books. They shall appoint, require, and use as agents in the discharge of this responsibility superintendents, principals, teachers, and such other agents as they or the state school book commission may authorize.

Section 2. Inspection.—Textbooks shall be subject to inspection by inspectors or agents authorized by those having charge of the local textbook service, county service, and/or authorized by the state school book commission. It shall be the duty of the teachers to inspect and make a check of the books frequently to see that proper care has been taken of them.

Section 3. Reports.—The trustees or their agent(s) shall give the director of the state school book commission inventory reports as to the condition of books in the hands of the district at the middle of the school year and at the end of the school year or as often as the director may require. All other agents charged with the care of books shall give reports as required or requested by the authorities under which they work. Districts and counties shall receive reports from their agents as required or requested.

Section 4. Races' books separate.—In the handling of school books, it is mandatory that the books used by the different races be kept separate.

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Section 5. Covering.—All rental books must be covered by the pupils under the direction of the teacher. Old covers must be removed from books at the end of the school year and new covers placed on them before or at the beginning of the next school year.

Section 6. Stamping—books shall not be stamped until rented to teachers and/or pupils.—All paper bound books shall not be marked as the property of the State. When books are issued to pupils and/or teachers (Article III, Sections 6 and 7), they shall be stamped on the back binding and on page 30 with stamps provided by the state school book commission. On the back binding stamp spaces shall be provided for the number of books and dates for several years.

Section 7. Identification.—The names of the students and/or teachers and the names of schools shall be written on the covers of books. If desired, schools may also number books in the spaces provided on the stamp mentioned in section 6 above. In lieu of numbering, other suitable means of identification may be used.

Section 8. Marking.—Students shall not mark books, paste labels in them, or in any way force the bindings. Article III, Section 10, provides penalties for any loss, abuse, and/or damage beyond normal wear and tear.

Section 9. Home study.—Each board of trustees shall have the authority to make rules with regard to the use of books for home study. This authority may be delegated to superintendents, principals, supervisors, and teachers.

Section 10. Storage.—Under the law, school trustees must provide secure place(s) of storage for books for such time as they are not rented to pupils. Separate storage shall be provided for the books of different races. In small schools, locked cases of either steel or wood shall be provided. The space used for storage must have good doors and secure locks, be clean, dry, well arranged, and rat proof. In lieu of the above part of this section, trustees may return books to rental depositories designated by the county superintendent, where they shall be properly receipted. Care must be taken to see that books in storage do not mold.

Section 11. Epidemic.—All books used by pupils who have been exposed to contagious diseases may be disinfected; however, this need not be done except upon the advice of the county health officer or a regular physician. (See Article IV, Sections 4 and 5.)

Article III—Distribution

Section 1. Depositories.—The state board of education has approved the publishers' central textbook depository in South Carolina located at Columbia. The state school book commission will use this central depository. Each county operating under the the South Carolina rental textbook law may set up a county rental depository in addition to or in lieu of rental depositories set up in the various school districts. The county board of education with the approval of the state school book commission shall determine the county policy. Where a county rental depository is operated, it shall be responsible to the state school book commission for books issued to it by legally designated agents and for rentals on books which it issues to schools and local rental depositories. The county rental depository must be under the supervision of the county superintendent of education.

Section 2. Quotas.—The number of copies of a text requisitioned should not exceed the difference between the total enrollment in the grade or grades to which the book is assigned and the number of usable copies of the book on hand. The total enrollment for any grade is the sum of the maximum number of pupils enrolled and the number of teachers for the grade plus five per cent (5%). (For the school year 1936-37, this special provision shall obtain: An estimated 25% of the enrollment's requirements for texts may be requisitioned before the opening of school, and the regular procedure shall be followed for any additional supply of books.)

Section 3. Requisitions.—All requisitions for books for each session should be made in quadruplicate copies near the close of the preceding session. The four copies shall be submitted for approval to the county superintendent. After approval, the local rental depository shall receive one copy; two copies shall be sent to the director of the state school book commission; and one copy shall be retained by the county superintendent. These requisitions must conform to all the instructions contained on the

blank forms and must give the total number of usable and worn-out copies on hand by actual count of each of the books listed on the blank. Records covering the disposal of books of former issue must be on file with the director of the state school book commission before additional new books can be requisitioned to replace them (Article IV, Section 3).

Section 4. Invoices.—Invoices from the central textbook depository shall be made in quintuplicate. One copy shall be retained by the central depository. Four copies shall be sent to the consignee or agent. These four copies of the invoice shall be checked with shipment, overages and/or shortages noted on each copy, dated, signed to show receipt, one copy retained, and three copies mailed in the following manner: one copy shall be sent to the county superintendent; one copy shall be sent to the director of the state school book commission; and one copy shall be sent to the central depository at Columbia. Invoices for the issue of books by county rental depositories to school districts shall be made in duplicate. One copy shall be retained by the county rental depository and one copy given to the district.

Section 5. Remittances.—Remittances to the state school book commission for rented, lost, or damaged books must be made one week after the opening of school and every thirty days thereafter by cashier's check, certified check, money order, county treasurer's check (not voucher), or school district checks, as the state treasurer cannot accept personal checks.

Section 6. Issue to teachers.—Duplicate records of books issued to teachers for distribution shall be made by issuing agents for school districts. One copy shall be retained by the issuing agent, and the other copy shall be given to the teacher.

Section 7. Issue to pupils.—A card record shall be made of books issued to a pupil. This card shall be signed by the pupil's parent or guardian to show receipt. It shall remain in the custody of the teacher until all the books are returned or paid for (Section 19). It shall then be signed by the teacher to show receipt of all the books listed and returned or paid for (Section 10). The card shall then be delivered to the pupil. (Refer to Section 9 for regulations about return of books.) Pupils who have previously been enrolled in the public schools of this State must not be granted rental textbooks save on the presentation of a receipted book card or transfer card.

Section 8. Surpluses.—No local rental depository shall keep on hand a surplus stock of new unrented books over and above their actual requirements. Local rental depositories and county rental depositories shall make reports on new unrented books as required by central depository. Within thirty days after the opening of school, the surplus stock of new unrented books less 5% as a reserve must be returned or turned in to the county rental depository, if there is one, or to the central depository in Columbia. All used unrented books shall be returned to the county rental depository, if there is one, or reported to the county superintendent and held subject to his order. All records for re-issue shall be the same as for original issue. But, quadruplicate receipts shall be issued upon return of books by a depository. One copy shall be given to the depository returning the books; one copy shall be retained by the county superintendent or the county rental depository; one copy shall go to the director of the state school book commission; and one copy shall go to the central depository; provided, the last copy may be omitted if the books have become the property of the State (Article I, Section 2).

Section 9. Return of books.—Books must be returned to the teacher at the close of the session, or when the pupil withdraws from school. Receipt shall be given, as provided in section 7. The teacher shall return the books to the school's storage. A duplicate receipt shall be issued. One copy shall be given to the teacher, and one copy shall be retained by the storage.

Section 10. Penalties.—Parents and/or guardians shall pay for books lost, abused, and/or damaged in any way beyond reasonable wear and tear, and the pupil and parent(s) and/or guardian(s) shall be denied the benefits of the South Carolina rental textbook law until this requirement is fully complied with. It is unlawful for any person to have in his or her possession any book belonging to the State of South Carolina and not properly rented. Such an offense is subject to criminal prosecution. No loss, damage, or abuse of books by pupils shall be charged against or deducted from teachers' salaries.

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Section 11. Deposits on books.—A trustee, superintendent, principal, teacher, or authorized agent of the board of trustees cannot require pupils to make a money deposit in excess of rental fees to secure the return of books.

Section 12. Purchasing books.—Rental books may be purchased by patrons and/or pupils at the contract retail price at depositories established by the central depository (not county or local rental depositories).

Section 13. Requisition for additional textbooks.—No requisition for additional textbooks shall be approved for any school district depository or county depository for the new fiscal year until that school district depository or county depository has submitted all required reports and paid all balances due the state school book commission for the preceding school year. (This section filed secretary state's office July 27, 1939.)

Article IV—Disposition

Section 1. Disposition of textbooks.—The state school book commission may provide for the disposition of such textbooks as are no longer in a fit condition to be used for the purpose of instruction, or for discarding books remaining the property of the State.

Section 2. Permission and authority.—The state school book commission may permit the destruction of certain State-owned textbooks, and the commission shall be the final authority to determine when a book is no longer in condition for use.

Section 3. Records of disposed books.—Before books may be disposed of, triplicate lists (Form) of the books to be destroyed must be sent to the office of the director of the state school book commission. In case of approval, the director shall retain a copy; one copy shall go to the county superintendent; and one copy to the local depository. An approved copy of the list of books to be destroyed must be in the hands of the local rental depository before books may be destroyed.

Section 4. Classes of books destroyed.—Only the following three classes of books may be destroyed:

- (a) Books used by children with contagious diseases: (Article II, Section 2.)
- (b) Worn-out, out-of-adoption books not of exchange value.
- (c) Worn-out current adoption books in other than white schools.

Section 5. Books handled by children with contagious disease.—See also Article II, Section 2.) Books handled by children suffering from contagious diseases, such as scarlet fever and diphtheria, should be destroyed only on written order of the local health officer. A copy of his order together with triplicate lists of Form should be sent to the director of the state school book commission. He shall retain one copy, and send one copy to the county superintendent, and one copy on to the local rental depository. If contaminated or infected books are to be destroyed, written authorization must be given by the director of the state school book commission.

Section 6. Method of destruction.—When books have been ordered destroyed by the proper authority and in the proper manner, they shall be burned. Those charged with the destruction shall see that the burning is complete.

Section 7. Imperfect books.—Imperfect books should not be charged against the pupils, but the director of the state school book commission shall be notified of the names of such texts. Such books shall be sent to the central depository, properly marked as having given unsatisfactory service. The director shall be notified, and he shall make accounting for the loss by the same type of authorizations as for books to be destroyed.

Article V—Miscellaneous

Section 1. Complaints.—Complaints in regard to the textbook service shall be made to the director of the state school book commission.

Section 2. Part of year.—Books shall be returned at the end of the year or when the pupil withdraws from school (Article III, Section 9), but there shall be no refunds of rental fees. (It is the sentiment of the commission that the making of books second-hand and the keeping of records cause the rental system losses which can only be repaid by forfeiture of rental fees.)

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Section 3. Out-of-State transfer.—In case a pupil moves out of the State during the first half of the school year, after the return of his or her books, he or she shall be refunded half the rentals paid. The refund shall be made by the director of the state school book commission. He shall require as evidence for this disbursement the pupil's receipted book card and a written authorization sent in directly by the county or local rental depository under which his school operates. If the pupil is in the second half-year of school when he moves, there shall be no refund.

Section 4. Issue of books upon a mid-year transfer.—As provided in Article III, Section 9, when a student leaves school during a school year, he shall return his books. But, such a student shall be entitled to the issue of books at the school to which he may go later in the year to the extent of rentals paid (fractions disregarded). Should the rental fees of the student's books at the new school exceed what he paid at the former school, he shall pay the difference. If the rentals at the new school are less, he shall not be entitled to a refund. (The commission is making the provision of the last sentence to compensate for clerical losses.)

Section 5. Small books.—Where books are bound in one-year and two-year copies, are available, and it is economical to do so, the one-year copies will be used under the rental system.

Section 6. Uniform book rate.—All rental fees shall be based on a book rate instead of a flat pupil rate or flat grade rate. Uniform rentals as set up by the state school book commission shall be collected throughout the State.

Section 7. Part year use of books.—Where a book is completed in the course of the school year, the yearly rental shall be charged. But, where the book is used a half-year according to the course of study and completed the following year, only half the regular rental shall be paid the first year.

Section 8. Standard books.—Books shall conform to the standards specified by the state board of education upon adoption. After the expiration of the current adoption period, the state school book commission shall specify standards for books.

Section 9. Interpretation.—The state school book commission shall interpret these regulations both as to the meanings of words and substance of thought, and shall make changes from time to time as conditions may warrant.

Tax Commission.

ADOPTED BY THE SOUTH CAROLINA TAX COMMISSION.

Alcoholic Liquors.
Beer and Wine.
Sales and Use Tax.

Alcoholic Liquors.

Pursuant to § 4-6, S. C. Code of 1952.

(Filed Secretary of State's office July 6, 1945 except as otherwise noted.)

Regulation 1. The State Department of Agriculture may accept for storage and warehousing any alcoholic liquors as defined in this Act in the same manner as cotton or any other agricultural products are stored, and in addition to all applicable laws pertaining to warehousing of cotton, the said State Department of Agriculture may make such rules and regulations, not inconsistent with this Act, nor with the Statutes defining the duties of that office, that alcoholic liquors may be stored in such suitable warehouse as may be determined by said Department, without having affixed thereto the revenue stamps provided for under said Act, but when any alcoholic liquors are to be removed from a warehouse, the owner of said alcoholic liquors shall affix the revenue tax stamps provided for in this Act before the removal thereof.

Regulation 2. No person shall call upon a licensed dealer for the purpose of soliciting, taking orders for, or selling alcoholic liquors, unless he is the holder of a permit issued by the Tax Commission. Such permits will be issued to proper persons free of charge

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upon application therefor, and will continue in effect until the following June 30, after issuance. The Commission may revoke such permits for cause. The owner of any brand who permits his representative to violate this Regulation will not be allowed to sell his brand in this State.

Regulation 3. All shipments of alcoholic liquors received by a wholesaler from a point without the State shall be transported by railroad companies, steamship companies, express companies or truck companies, authorized to do business in this State as common carriers by the South Carolina Public Service Commission, and no alcoholic liquors shall be accepted by wholesaler except that so transported.

Regulation 4. A wholesaler may deliver alcoholic liquors to a licensed dealer only. Delivery may be made only in vehicle owned and operated by the wholesaler, or by a common carrier, but in no other way; and delivery may be made only at the licensed premises of the purchaser.

Regulation 5. Every person licensed under the provisions of this Act is hereby required to keep and maintain in his licensed premises adequate records of all business transactions. Such records must be kept for a period of two (2) years and shall at all times be open to the inspection of any authorized representative of the Tax Commission.

Regulation 6. For the purpose of uniformity, the sign required in Section 4 (C) (6) shall be placed in the lower right hand corner of the window to the left of the door. In the event there is no window to the left of the door, such sign must be placed in the lower left hand corner of the window to the right of the door; and, in the event there are no windows, such sign must be placed on the door itself. Letters in "Retail Liquor Store" must not exceed three (3) inches in height, and letters in the name and license number must not exceed two (2) inches in height.

Regulation 7. No matter of any kind, printed, painted, electric, or otherwise, advertising alcoholic liquors will be permitted on the exterior or interior of any licensed premises. The display in show windows of matter of any kind or description is forbidden, except for official matter furnished by the Treasury Department pursuant to the sale of War Bonds.

Regulation 8. Neither a wholesale nor a retail dealer shall advertise his wares except in magazines, newspapers and other publications issued at regular intervals and no advertisement of a retail dealer shall contain a direct or indirect reference to price. (Filed Secretary of State's office November 28, 1945.)

Regulation 9. Any wholesale liquor dealer is permitted to deliver from his unstamped stock of alcoholic liquors to Officers' Clubs, Canteens, or other such organizations located on government reservations when such purchases are permitted under the Regulations of the Federal Government. Such deliveries by wholesalers to be made in a vehicle owned and operated by such wholesaler or by a common carrier. The wholesaler will be required to pay the gross profits tax and the wholesaler's graduated case tax. (Filed Secretary of State's office March 1, 1952.)

Regulation 10. All Regulations applicable to the place of business of a licensed liquor dealer, now in force under Regulations of the Tax Commission, shall also be applicable to wine stored, handled, or sold at the place of business of a licensed liquor dealer.

Regulation 11. No retail dealer may receive from any other retail dealer any alcoholic liquors whatsoever either by way of sale, loan, exchange, gift or otherwise, without special permission of the Tax Commission.

Regulation 12. No retail liquor dealer shall be permitted to purchase any alcoholic liquors except from a licensed dealer in this State. The purchase, or negotiation for purchase, of alcoholic liquors from without the State by a retail dealer is strictly forbidden. No wholesale liquor dealer shall be permitted to purchase alcoholic liquors for the exclusive use of any retailer, nor shall he be permitted to affix alcoholic liquors tax stamps to any liquors purchased from without the State by any retail dealer. (Filed Secretary of State's office April 18, 1946.)

Regulation 13. No license for the operation of a retail store shall be issued to any employee of a wholesaler, nor shall such employee be permitted to have any interest, directly, or indirectly, in any retail store.

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Regulation 14. All alcoholic liquors displayed on shelves in retail liquor stores are deemed to be offered for sale, and must be sold to any person who wishes to purchase. A retail liquor dealer is permitted, however, to limit the quantity to be sold to any one customer to one bottle. No retail dealer shall condition the sale of alcoholic liquors to any purchaser on the purchase of any other kind or brand of alcoholic liquors than that desired by the purchaser. (Filed Secretary of State's office November 28, 1945.)

Regulation 15. In order to effect a more equitable distribution of alcoholic liquors, all wholesalers in this State are hereby required to distribute their liquors according to the following program:

1. All whiskies, both domestic and imported, including Bourbon, Rye, young whiskies, blends of straight whiskies, blends with neutral spirits, (either cane or grain) Scotches, Canadian, Irish, or any other kind of whiskey, and both domestic and imported gins, shall be distributed into the counties of the State according to the following percentage formula: (This formula gives equal weight to the normal purchase record of each county and its present population)

COUNTIES	PERCENTAGE	COUNTIES	PERCENTAGE
Abbeville	.009	Greenwood	.022
Aiken	.023	Hampton	.007
Allendale	.006	Horry	.024
Anderson	.038	Jasper	.005
Bamberg	.008	Kershaw	.019
Barnwell	.009	Lancaster	.019
Beaufort	.012	Laurens	.017
Berkeley	.010	Lee	.008
Calhoun	.005	Lexington	.014
Charleston	.112	Marion	.013
Cherokee	.019	Marlboro	.014
Chester	.019	McCormick	.004
Chesterfield	.019	Newberry	.014
Clarendon	.012	Oconee	.014
Colleton	.010	Orangeburg	.027
Darlington	.017	Pickens	.014
Dillon	.013	Richland	.098
Dorchester	.010	Saluda	.006
Edgefield	.006	Spartanburg	.069
Fairfield	.011	Sumter	.024
Florence	.034	Union	.013
Georgetown	.017	Williamsburg	.015
Greenville	.071	York	.050
			1.000

2. Each county must receive its proper allocation of all whiskies, both as to brand and type. Each individual brand of whiskey must be allocated in proper proportion to each county. In the event less than one hundred cases of a particular brand are distributed, it must be evenly distributed between the counties; in the event less than forty-six cases of any particular brand are distributed, beginning alphabetically, each county must receive one case. Subsequent shipments of such brands are to be again distributed to the counties alphabetically beginning where the preceding distribution would terminate.

3. Each wholesaler, regardless of the amount of sales each month, is subject to the provisions of this program and any failure to comply with its provisions will necessitate the immediate revocation of license. No allowance for protection of key accounts, or for any other reason, are made.

4. After all whiskies have been allocated to the counties in accordance with the preceding program, each licensed retailer in a county is to receive an equitable proportion of that county's allocation of whiskey, both as to quantity, brand and type. The distribution within the county must be such that no retail dealer will receive more than two cases of whiskey until every other dealer has received one; no retailer to receive more than four cases until every other retailer has received two, etc. In the event certain brands of whiskey are not available in sufficient quantities to provide one case to each retailer, distribution must begin alphabetically and continue until the supply of that brand is

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exhausted. Subsequent allocation of such brands are to be again distributed alphabetically, beginning where the preceding distribution terminated. No retailer is to receive more than two cases of a county's allocation of a particular brand until every other retailer has received one case; none more than four cases until each have received two cases, etc.

5. Only cordials, Rums, and sweet liquors are exempt from the provisions of this program.

6. Upon presentment of evidence to the Tax Commission that certain brands and types of whiskies are available in quantities exceeding the demand therefor, such brands and types of whiskies may be removed by the Tax Commission, in writing, from this program.

7. Any subterfuge to avoid compliance with any of the provisions of this Regulation shall be deemed a violation of such regulation and shall subject the license of the violator to immediate revocation.

8. This Regulation shall become effective at the beginning of business on Wednesday, May 1, 1946. All undelivered orders on hand at that time must be cancelled, and deliveries of merchandise made in accordance with the provisions of this program. (Filed Secretary of State's office April 18, 1946.)

Regulation 16.

1. No retailer shall be permitted to sell more than two bottles of Bourbon, Rye, Irish, Scotch, Canadian whiskey or blends of straight whiskey, at any one sale, or in any one day, to any one individual.

2. No retailer may sell more than one-half case of any young whiskey or spirits blended whiskey (either cane or grain spirits) at any one sale or in any one day to any one individual.

3. No retailer shall make any sale in excess of one case of alcoholic liquors to any one individual in any one sale, or in any one day. This section to apply to all liquors not covered in paragraphs one and two above.

4. No retailer shall sell any merchandise knowingly, or unknowingly, for the purpose of re-sale. The license of any retailer making such sale will be immediately revoked on the ground that such licensee is not a proper person to hold the license.

5. Any subterfuge to avoid the observance of this Regulation shall be deemed a violation of such Regulation and the license of such violator shall be immediately revoked. (Filed Secretary of State's office April 18, 1946.)

Regulation 17. Void.

Regulation 18. Hereafter when free goods are given to any retail liquor dealer it shall be shown on the invoice from the distiller to the wholesale liquor dealer and on the invoice from the wholesaler to the retailer and the retail liquor dealer shall be charged with the gross profits tax just the same as on other goods sold, and all free goods for retailers shall be delivered through a licensed wholesaler.

This Regulation shall not apply to free goods withdrawn from the wholesaler by the distiller, which is not to be used for re-sale or that given as samples or used personally by the distiller's salesman. (Filed Secretary of State's office March 29, 1949.)

Regulation 19. Wholesale and retail liquor dealers are hereby prohibited from selling alcoholic liquors on credit. (Filed Secretary of State's office June 10, 1949.)

Regulation 20. No licensed liquor dealer shall remove alcoholic liquors from his licensed place of business during the hours such business is required to be closed. (Filed Secretary of State's office February 18, 1952.)

Beer and Wine.

Pursuant to § 4-6, S. C. Code of 1952.

Regulation 1. All retail prices of Beer and Wine, as provided by law, must be prominently displayed in their place of business by all licensed retail Beer and Wine dealers. (Filed Secretary of State's office October 27, 1947.)

Regulation 2. In anticipation of the possible inability of brewers to obtain an adequate supply of South Carolina Tax Paid Crowns, the South Carolina Tax Commission hereby adopts for the period of the duration the alternative use of a Beer Tax Case Stamp.

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This stamp, to be used only when tax paid crowns are not obtainable, will be prepared in two denominations: 48¢, to be used on a case of twelve ounce bottles and 72¢, to be used on a case of thirty-two ounce bottles. These stamps will be sold without discount and no allowance will be made for breakage. (Filed Secretary of State's office February 16 and 17, 1943.)

Sales and Use Tax.

Pursuant to § 65-1443, S. C. Code, 1952.

(Filed Secretary of State's office June 30, 1951 except as otherwise noted.)

Reg. 1. Retail bracket system including tax collection requirements.

(a) Under authority contained in Section 4, Subarticle III of the South Carolina Sales and Use Tax Law the following bracket system shall apply in the collection of the tax:

Sales less than \$1.00

0.01 to	0.10—no tax
0.11 to	0.35—1¢ tax
0.36 to	0.65—2¢ tax
0.66 to	\$1.00—3¢ tax

**Sales in excess of \$1.00

\$1.01 to	1.16—no additional tax
1.165 to	1.494—1¢
1.495 to	1.824—2¢
1.825 to	\$2.00 —3¢

The straight three per cent (3%) tax rate shall apply to all sales not involving a fractional part of a dollar.

In no case shall the amount of tax to be added to the sales price of any single article exceed the following sums:

\$0.11 to \$833.333—Tax to be computed as explained in (a) above

\$833.334 to \$1,500.00—\$25.00 tax

\$1,500.01 to \$3,000.00—\$40.00 tax

\$3,000.01 and above—\$75.00 tax.

(b) Every person or company engaged in the business of selling tangible personal property, the gross receipts or proceeds from the retail sale of which are subject to the sales tax, is required to add to the sales price and collect from the purchaser the amount of retail sales tax as calculated in (a) above.

(c) It is unlawful for any person or company to fail or refuse to add to the sales price and collect from the purchaser the amount required to be collected or to refund all or any part of the amount collected, or to absorb or to advertise directly or indirectly the absorption or refund of the amount required to be added to the sales price and collected from the purchaser, or any portion of such amount.

Reg. 2. Taxes due monthly.

The sales tax is due and payable in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Taxes collected from retail sales for the month of July, 1951 are due on or before the 20th day of August, 1951.

Reg. 3. Computation of tax and vendors' discount.

The Sales tax is imposed upon every person, or company engaged, or continuing within this State, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debt or stocks) an amount equal to 3% of the gross proceeds of sales of the business.

(a) Gross proceeds of sales means the value accruing from the sale, at retail, of tangible personal property. Arithmetically, gross proceeds would be the sales price per unit times the number of units sold, excluding gross proceeds realized from the sale of exempt items. The term "gross proceeds" does not include the amount of a bona fide cash dis-

** Tax is to be levied on each thirty-three (33) cents or major portion thereof.

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count actually taken by the buyer; the amount of such discounts may be deducted from the gross proceeds of sales.

To illustrate: "A" sells a radio to "B" for \$100.00, subject to a discount of 2%, ten days. "A" credits his sales account with \$100.00. On the ninth day, "B" sends "A" a check for \$98.00 plus tax. In computing his tax liability, "A" may deduct from gross sales the \$2.00 discount taken.

The term "gross proceeds" does not include that portion of any transaction represented by the amount allowed for second hand goods used as a trade-in on the purchase price of tangible personal property in any transaction covered by a chattel mortgage or a retention title contract. "Gross proceeds of sales" does not include the sale price of property returned by customers when the full sales price of such property is refunded either in cash or by credit.

The term "gross proceeds" does not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer. Federal excise taxes so imposed include:

1. Federal Excise Taxes on Luggage, etc.

- (a) Trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, and salesmen's sample and display case.
- (b) Purses, hand bags, pocketbooks, wallets, billfolds, and card pass and key cases.
- (c) Toilet cases and other cases, bags, and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet articles or articles of wearing apparel.

2. Jewelry, etc.

Jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; watches and clocks and cases and movements thereof, gold, gold-plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware, opera glasses; lorgnettes; marine glasses; field glasses; and binoculars.

3. Furs.

4. Toilet preparations.

Perfumes, essences, extracts, toilet water, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known.

(b) The tax is computed upon the actual consideration (gross proceeds) passing between the buyer and seller, and is based upon any item going into the ultimate selling price, including material, labor and any other expenses.

To illustrate computation of sales tax: "A", a retail grocer, has gross sales for the month of July in the amount of One-hundred-thousand (\$100,000.00) Dollars upon which he has collected Three-thousand (\$3,000.00) Dollars in sales taxes. "A", in computing his tax liability, takes three (3%) per cent of the amount of taxes collected, which sum amounts to Ninety (\$90.00) Dollars. "A" is permitted under the law, to retain three (3%) per cent of the amount of taxes collected, not to exceed Five-thousand (\$5,000.00) Dollars during any one fiscal year. Thus, three (3%) per cent of Three-thousand (\$3,000.00) Dollars is Ninety (\$90.00) Dollars, hence "A" must remit to the South Carolina Tax Commission Two-thousand-Nine-hundred-and-Ten (\$2,910.00) Dollars.

Reg. 4. Trade-ins.

In a transaction covered by a chattel mortgage or a retention title contract, the tax levied by this Act shall be computed and paid on the difference between the gross proceeds of the article sold less the credit allowed the purchaser for the article accepted in trade. Illustration: "A" sells "B" tangible personal property for Two-thousand (\$2,000.00) Dollars and accepts in payment therefor One-thousand-Five-hundred (\$1,500.00) Dollars cash and allows credit on second-hand goods traded in in the amount of Five-hundred (\$500.00) Dollars. The vendor would compute the tax on the difference between Two-thousand (\$2,000.00) Dollars and Five-hundred (\$500.00) Dollars, or One-thousand-Five-hundred (\$1,500.00) Dollars.

Reg. 5. Books of account.

Every person or company engaged in this State in selling at retail and at wholesale should keep his books of account in such a manner as to show separately the gross proceeds from his retail and his wholesale sales. In the absence of such bookkeeping distinctions, all sales are presumed to be retail sales.

Books of accounts must be kept in such a manner as to clearly show a record of all exempt items which the vendor claims as deductions.

Reg. 6. Sales tax return required.

All retail vendors required by law to collect, report, and remit sales taxes levied under provisions of Subarticle III must prepare and forward to the South Carolina Tax Commission, within the time fixed and prescribed by law, on forms prepared and furnished by the South Carolina Tax Commission, monthly sales tax returns.

Reg. 7. Conditional sales.

Retailers selling under conditional sales contracts, or other forms of retention title contracts, may elect to pay the tax upon the collections made during the month, or on the full amount of the sale. The retailer is required to be consistent in the use of either method, and he may change only on the permission of the South Carolina Tax Commission.

Reg. 8. Application of use tax.

The Use Tax applies to the sales price of all tangible personal property delivered or imported into this State for storage, use, or other consumption after the effective date of this law. The Use Tax stands as a complement to the Sales Tax and therefore does not apply to tangible personal property especially exempted from the tax under Subarticle III, nor does it apply to the gross proceeds of sales which are taxed under the Sales Tax Provisions of this law.

Reg. 9. Measure of the use tax.

The measure of the Use Tax is three (3%) per cent of the sales price of tangible personal property purchased at retail for storage, use, or other consumption in this State, with the provision that the Use Tax will in no case exceed the amounts as shown in Section I, Subarticle IV.

Reg. 10. Tax incidence Subarticle IV (Use Tax).

It is unlawful for any seller to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded.

Reg. 11. Lease or rental.

The gross receipts or gross proceeds derived from the lease or rental, within South Carolina, of all kinds and types of tangible personal property are subject to the tax levied under this Act in all cases involving agreements, contracts, lease or rental arrangements or by whatsoever method when it is contemplated that title to such property shall vest in the user or consumer. The gross receipts or gross proceeds derived from the lease or rental, within South Carolina, of all kinds of tangible personal property under bona fide lease or rental arrangements by the terms of which the title to such property remains in the lessor or rentor are not subject to the Sales or Use Tax. (Amendment filed Secretary of State's office July 13, 1951.)

Reg. 12. Withdrawals from stock.

The Use Tax will apply to the fair market value of tangible personal property previously purchased at wholesale which is withdrawn for personal or business purposes, and will be taxed on the basis of the fair market value on the date of withdrawal. For purposes of administering this law the term "fair market value" will be taken to mean the retail sales price of such property withdrawn in the absence of affirmative proof to the contrary.

Reg. 13. Withdrawals not subject to use tax.

Property previously purchased at wholesale which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale is not subject to the Sales or Use Tax.

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Reg. 14. Retail license.

(a) As a condition precedent to doing business in this State, on or after July 1, 1951, every retailer, shall obtain a retail license for each retail outlet in accordance with the schedule provided in Section I, Subarticle II of the Sales and Use Tax Law of 1951.

(b) Every retailer making sales of tangible personal property for storage, use or other consumption in this state, who:

1. Maintains a place of business.
2. Qualifies to do business.

3. Solicits and receives purchases or orders by agent or salesman must obtain from the Tax Commission a retail license as outlined in (a) above.

(c) For the purpose of determining the amount of retail license tax payable by persons owning or operating vending or coin operated machines dispensing tangible personal property in this State, each point from which the service for such machines originates, shall be considered to be a retail outlet and a retail license must be obtained for each point of service. (Filed Secretary of State's office September 17, 1951.)

(d) For the purpose of grading and determining the amount of license tax due and payable, any person taxable under subarticle II is regarded as the person which ultimately controls or directs the management or control of any retailer or any group or association of retailers, whether they be operated under separate charter or not.

Reg. 15. Application for retail license.

(a) Application for retail license shall be made to the South Carolina Tax Commission, Drawer 420, Columbia, South Carolina, on a form prescribed by the Tax Commission.

(b) The application for the license shall show the name and address of each retailer for which license is applied. A separate license must be secured for each place of business, must be conspicuously displayed at the place for which used and is valid for the period stated thereon, unless sooner suspended or revoked by the Tax Commission. The retail license is not transferable and is valid only for the place for which issued.

Reg. 16. Vendor to collect tax and file return—Use Tax.

(a) Every seller engaged in making sales of tangible personal property for storage, use, or other consumption in this state, who,

1. Maintains a place of business,
2. Qualifies to do business,

3. Solicits and receives purchases or orders by agent or salesman, making sales, whether within or outside the State, of tangible personal property for storage, use or other consumption in this State after the effective date of this law, shall at the time of making sales, collect the tax imposed by the law from the purchaser.

(b) On or before the twentieth day of the month next succeeding each quarterly period during which the storage, use or other consumption of tangible personal property became taxable, the first of such quarterly periods being the period ending the thirtieth day of September, 1951, every seller in (a) above shall file with the Tax Commission a return for the preceding quarterly period on a form prescribed by the Tax Commission showing the total sales price of the tangible personal property sold by such seller. The return shall be accompanied by a remittance of the amount of tax herein required to be collected by the seller during the period covered by the return.

Reg. 17. Vendor's discount.

Whenever Sales and Use Tax returns required by this law are filed and the taxes shown thereon are paid in full, on or before the due date, the taxpayer shall be allowed a discount equal to three (3%) percent of the taxes shown due by the tax return. In no case shall the discount exceed Five Thousand (\$5,000.00) Dollars during any fiscal year.

Reg. 18. Extension of time for making payment.

The Tax Commission may, for good cause, extend the time for making a return. Any person to whom the extension is granted shall pay in addition to the tax, interest thereon at the rate of one-half of one per cent per month or fraction thereof from the due date of tax to the date of payment.

Reg. 19. Distributors of catalogues—registration.

Every person or company who distributes catalogues or other advertising matter in the State of South Carolina and by reason thereof receives and accepts orders from residents, shall register with the South Carolina Tax Commission within thirty (30) days

after the effective date of this law, July 1, 1951, and shall furnish such information as the Tax Commission may require.

Reg. 20. Contractors—retail sale.

Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold, and the seller thereof shall be liable for the tax.

Reg. 21. Freight, delivery or transportation charges.

Whether or not freight, delivery, or transportation charges may be deducted by the seller from the selling price of tangible personal property sold for use or consumption, in computing his liability for tax under the Sales and Use Tax Law, does not depend upon the separate billing thereof, but depends upon whether or not the services rendered by the railway company or other transporting agency are rendered to such seller or to the purchaser.

If the seller contracts to deliver tangible personal property to some designated place, or is obligated under the contract to pay transportation charges to some designated place, the transportation services are rendered to the seller or user and the selling price of the tangible personal property so transported must include the amount of the transportation charges. In this event such charges are *not deductible* by the seller in computing his tax liability under the Law. On the other hand, if the seller contracts to sell tangible personal property f.o.b. origin, the title to the property passing at such point to the buyer and the buyer pays the transportation charges, then the transportation services are rendered to the buyer and are not a part of the selling price of the vendor. Therefore, such transportation charges should not be included by the vendor in computing his tax liability under the Law. These principles will apply irrespective of whether such charges are separately billed by the seller from the tangible personal property sold.

Reg. 22. Construction contracts.

Sales of tangible personal property delivered prior to January 1, 1952, under terms of construction contracts executed prior to April 1, 1951, shall be exempt from the sales and use taxes, but only if a verified copy of such construction contract is filed with and approved by the South Carolina Tax Commission prior to July 1, 1951.

Reg. 23. Gifts and premiums—sales tax.

Donors of tangible personal property are regarded as consumers thereof, and the tax applies to the gross proceeds from the sale of the property to them. Gross proceeds from the sale of goods which are to be given away for advertising purposes are taxable.

Purchasers of property to be awarded as prizes, the winning of which depends upon chance or skill are regarded as the consumers thereof, and the tax applies to the gross proceeds from the sale of such property to them. The operator of a game of skill, or a game of chance, is regarded as the consumer of the property used in connection with such operations, and the tax applies to the gross proceeds from sales of tangible personal property to the operator.

Reg. 24. Gifts and premiums—Use Tax.

Donors of tangible personal property are regarded as consumers thereof. Purchasers of property to be awarded as prizes, the winning of which depends upon chance or skill, are regarded as the consumers thereof. The operator of a game of skill, or a game of chance, is regarded as the consumer of the property used in connection with such operations.

Reg. 25. Watch and jewelry repair shops.

The jewelry repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible personal property used by him in rendering such services. Consequently, the sale by the supply house to the jewelry repairman of articles of machinery and equipment and of such supplies as springs, crystals, jewel staffs, gold, silver, solder and other materials used incident to the repair operation are sales at retail within the meaning of the Sales and Use Tax Act. Receipts of the jewelry repairman from watch, clock or other jewelry repair are not subject to the tax.

The sale of watches, clocks, watch bands, watch chains, and other items of jewelry or property of like nature constitutes sales of tangible personal property and as such bear the 3% tax. The repairman making sales of such property is required to hold a retail

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license and to collect and remit directly to the Tax Commission the sales tax on such sales. (Filed Secretary of State's office November 15, 1951.)

Reg. 26. Shoe repair shops.

The shoe repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible personal property used by him in rendering such services. Consequently, the sale to the shoe repairman of articles of machinery and equipment and such supplies as sole leather, rubber heels, thread, nails and other findings for use in connection with rendering such services are sales at retail within the meaning of the Sales and Use Tax Act.

The sale of shoe laces, second hand shoes, package products and other like property constitutes sales of tangible personal property and as such bear the 3% tax. The repairman making sales of such property is required to hold a retail license and to collect and remit directly to the Tax Commission the sales tax on such sales. (Filed Secretary of State's office November 15, 1951.)

Reg. 27. Florists, telegraphic orders.

Where florists sell through a telegraphic delivery association the following rules will apply:

1. On all orders taken by a South Carolina florist and telegraphed to a second florist in South Carolina for delivery in this State, the sending florist will be held liable for tax measured by three (3%) per cent of his receipts from the total amounts collected from the customer.

2. In cases where a south Carolina florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside South Carolina for delivery of flowers to a point outside South Carolina, tax will likewise be owing with respect to the total receipts of the sending florist from the customer who placed the order.

3. In cases where a South Carolina florist receives telegraphic instructions from other florists located either within or outside of South Carolina for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the transaction. In this instance, if the order originated in South Carolina, the tax will be payable by the South Carolina florist who first received the order and gave the telegraphic instructions to the second florist.

Reg. 28. Photographers and photo finishers.

Photographers operating photographic studios for the purpose of taking photographs and portraits are primarily engaged in the business of selling tangible personal property to their customers and such sales are taxable.

In cases where individuals deliver pictures to photographers or photographic studios for tinting or coloring, the receipts from such tinting or coloring would not be subject to tax, since such a charge would be the result of service rendered.

Where individuals deliver to what are commonly known as photo finishers, films for developing by the latter, the charge made by photo finishers for actual developing of the films is compensation for a service and does not represent receipts from the sale of tangible personal property. If, however, the photo finisher supplies or sells to his customer, for whom he may be developing the film, printed pictures, the charge for such prints or pictures would constitute a sale at retail, which would be taxable. In such cases, if the photo finisher does not segregate the charge for developing of the films from the charge for prints or pictures, the total amount of the charge to the customer would be taxable. Photostatic copies produced and sold by a photostat producer to purchasers for use, and not for purpose of resale, constitute sales of tangible personal property at retail and are taxable. Likewise, persons engaged in the business of photoengraving and lithography, selling lithographs and photoengravings to others for use in printing advertising matter or other printed matter, are making sales at retail and are taxable.

Reg. 29. Hospitals.

Hospitals are required to pay the 3% tax on supplies purchased by them. Hospitals, infirmaries, sanitariums and like institutions are engaged primarily in the business of rendering services. They are not liable for sales tax with respect to their gross receipts from meals, bandages, dressings, drugs, X-ray photographs, and other tangible personal property, where such items of tangible property are used in the rendering of hospital service. This is true irrespective of whether or not such tangible items are billed separately to their patients. Hospitals, infirmaries and sanitariums are deemed to be the pur-

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chasers for use or consumption of such tangible personal property and the sellers of these items of hospitals, infirmaries or sanitariums are required to collect the tax on sales of such property to hospitals.

Where meals are served to nurses, attendants, and patients of the hospital as a part of the service rendered in the conduct of the institution, the hospital, infirmary or sanitarium is deemed to be the user or consumer of all food and beverage products used in the preparation of these meals.

Reg. 30. Optometrist, oculists, opticians and ophthalmologists.

Ophthalmologists, oculists and optometrists are engaged primarily in rendering professional services and when they furnish, replace, or repair eye glasses, lenses or other such ophthalmic materials for their patients in connection with their services the gross receipts from such services are not taxable, but they must pay the tax as consumers to their suppliers on all materials purchased by them for use in the performance of such service.

The optician is the maker and seller of eye glasses. He does not examine eyes, but merely fills prescriptions supplied by the ophthalmologist, oculist or optometrist and must charge the tax on all sales by him to users or consumers. The optician is required to obtain a retail license and collect and remit the tax on the gross proceeds of such sales.

All persons or companies, whether opticians, optometrists or otherwise, making sales of such property as sun glasses, barometers, telescopes, binoculars, opera glasses, etc. are required to have a retail license and collect the sales tax upon the sale of such items of merchandise to the consumer or user thereof.

The provisions of this Regulation, as amended, shall be effective retroactive to October 1, 1951. (Filed Secretary of State's office October 10, 1951.)

Reg. 31. Printers.

Printers are engaged in the business of producing tangible personal property and their sales of printed matter such as catalogues, books, letterheads, bills, envelopes, folders, advertising circulars, and the like, to purchasers who use or consume these articles and do not resell them are sales at retail, the gross proceeds of which are within the Act. A printer may not deduct from the selling price of such tangible personal property charges for the labor or service of performing the printing even though such labor or service charges may be billed to the customer separately from the charge for the stock. Such labor or service is embodied in and becomes a part of the tangible personal property sold. Where printers purchase from the United States Post Office cards and envelopes stamped for postage, and imprint thereon various legends for customers, the printers must pay the tax measured by their gross proceeds of the sale of the printed cards or envelopes to their customers. Such cards and envelopes constitute tangible personal property and if they are not resold by such customers, the sales by the printers are at retail. Such printers are entitled to deduct the amount of the postage from the selling price.

No tax arises from the service of imprinting or from the service of type-setting performed by the printer for a customer, or for another printer, where title to the metal does not pass to the customer.

Reg. 32. Barber and beauty shops.

Barber and beauty shop operators primarily render personal services. They are the purchasers for use or consumption of such tangible personal property as is used or consumed incidentally in the rendering of such personal service.

Barber and beauty shops are not, however, relieved from collecting and reporting the tax on sales of tangible personal property, for use or consumption, such as package cosmetics, hair tonics, lotions, and like articles, when sold apart from the rendering of personal services to the purchasers thereof.

Reg. 33. Interstate commerce regulations.

Goods coming into this state. When tangible personal property is purchased for use or consumption in this state and (1) the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and (2) delivery is made in this state, such sale is subject to the sales tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a specified point outside this state and shipped directly to the purchaser from the point of origin.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the state of (2) that the contract is made before the property is

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brought into the state. Delivery is held to have taken place in this state (1) when physical possession of the tangible personal property is actually transferred to the buyer within this state or (2) when the tangible personal property is placed in the mails at a point outside this state directed to the buyer in this state or placed on board a carrier at a point outside this state (FOB or otherwise) and directed to the buyer in this state.

Engaging in business in this state shall include any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the state under the authority of the seller or its subsidiary.

2. Goods shipped from this state. When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside of the state or to deliver it to a carrier or to the mails for transportation to a point outside the state, the retail sales tax does not apply, provided that the property is not returned to a point within the state. The most acceptable proof of transportation outside the state will be:

- (a) A way-bill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance receipt or registry issued by the United States Postal Department, or a Post Office Department receipt Form 3817; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or to an agent of his other than a common carrier the retail sales tax applies notwithstanding that the buyer may subsequently transport the property out of the state.

Reg. 34. New automotive passenger vehicles, sales of.

For the purpose of determining the gross proceeds of the sale of a single article in the case of the sale of a new automotive passenger vehicle, the unit as received by the dealer from the manufacturer shall constitute a single article provided that a radio and/or heater ordered by the purchaser as a part of the original sales transaction shall be considered a part of the single article regardless of whether such property is installed at the factory or by the dealer. Any equipment whatsoever installed by the dealer other than the property under the conditions outlined above shall be taxed separately. (Filed Secretary of State's office, May 16, 1952.)

Reg. 35. Used automotive vehicles, sales of.

The used automotive vehicle as acquired by the retailer shall be considered a single article for the purpose of determining the gross proceeds of sales of this kind of property. Any accessories or optional equipment installed by the retailer after acquisition by him shall not be considered a part of the used automotive vehicle.

The foregoing shall become effective December 15, 1951. (Filed Secretary of State's office December 11, 1951.)

Water Pollution Control Authority, South Carolina

Promulgated under authority of Water Pollution Control Act, § 70-108, S. C. Code of 1952.

(Filed Secretary of State's office October 27, 1950.)

1. Until further notice, applications for permits and plans and specifications for (1) new disposal systems (2) alterations or additions to existing disposal systems (3) placing such new or altered system in operation (4) increasing the load on any receiving stream by added discharge through an existing system, shall be submitted to the Sanitary Engineering Division of the State Board of Health in accordance with existing regulations; and upon approval thereof by the State Health Officer, said applications, plans and specifications shall be transmitted to the Executive Director of the Water Pollution Control Authority for final approval by the Authority.

2. Public notice of all hearings set by the Authority shall be made by publication once each week for two consecutive weeks prior to the hearing date in a newspaper of general circulation in the county in which the waters under consideration are located. Where the waters under consideration are located in more than one county, then such hearing shall be held in the county selected by the Authority and such notice shall be published

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in a newspaper of general circulation in the area concerned. Where the matter under consideration is deemed by the Authority to be of State-wide significance, such public hearing shall be conducted at the place selected by the Authority and public notice thereof shall be published once each week for two consecutive weeks prior to the hearing date in daily newspapers of general circulation in the Cities of Charleston, Columbia, and Greenville, or such others as determined by the Authority.

3. Public hearings provided by the Water Pollution Control Act shall be conducted by a Hearing Examiner or Examiners, who shall be Members of the Authority or persons duly authorized by the Authority, in accordance with the Act. A record of the proceedings shall be taken, and a copy thereof, certified by the Hearing Examiner, shall be filed in the office of the Water Pollution Control Authority. All testimony shall be given under oath administered by the Hearing Examiner or any other competent and authorized party. All parties and persons interested may present printed, mimeographed or typewritten briefs, and may make oral arguments in the discretion of the Hearing Examiner.

4. The Hearing Examiner shall within 30 days after hearing make a report of his findings and recommendations to the Water Pollution Control Authority for disposition of the matter under consideration. The report shall be accompanied by a transcript of testimony taken, together with exhibits, and a summary of relevant information from and results of stream examinations conducted by the technical staff of the Authority. The Authority will within 30 days after receipt of the Hearing Examiner's report make such determination and order in the matter as is necessary, which order shall be filed for public record in the office of the Water Pollution Control Authority. Copies thereof shall be mailed upon request to all parties or persons interested, and a copy of such order shall be served, by registered mail or by personal service, upon all persons or parties sought to be bound thereby. Where public hearings are held in connection with a meeting of the Authority, or are conducted by the Authority as a whole, decisions thereon shall be rendered within 60 days from the date of hearing, and an order thereon shall be filed in accordance herewith.

5. Appeals from final orders of the Authority shall be made within 30 days from the date of the filing of such order, in accordance with Section 6 of the Water Pollution Control Act.

6. Any person or persons who shall desire a hearing or re-hearing on any matter within the jurisdiction and control of the Water Pollution Control Authority, shall make a written request therefor directed to the Executive Director of the Authority, setting forth in concise form the specific questions sought to be considered and the reasons for such hearing or re-hearing. Such requests shall be considered by the Authority at the next regular meeting following receipt of the request, and the Authority may in its sole discretion grant such hearing or re-hearing.

CLASSIFICATION—STANDARDS SYSTEM

(Filed Secretary of State's office November 28, 1950.)

Section I. Definitions.

The definition of any word or phrase employed in Sections II or III shall be the same as given in Section 20, South Carolina Water Pollution Control Law. The following words or phrases which are not defined in said Section, shall be defined or have meanings as follows:

Source of water supply for drinking, culinary or food processing purposes shall mean any source, either public or private, the waters from which are used for domestic consumption, or used in connection with the processing of milk, beverages, foods or for other purposes which require finished water meeting U. S. Public Health Service Drinking Water Standards.

Approved Treatment as applying to water supplies means treatment accepted as satisfactory by the authorities responsible for exercising supervision over the sanitary quality of water supplies.

Bathing shall include swimming but shall be regarded as a best usage only for waters in which bathing is or may be expected to be subject to effective sanitary supervision and control.

Fishing shall include the propagation of fish and other aquatic life.

Agricultural shall include use of waters for stock watering, irrigation and other farm purposes but not as source of water supply for drinking, culinary or food processing purposes.

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Marine District waters shall mean all tidal waters which are so designated by the Water Pollution Control Authority and which generally shall have a chloride ion content in excess of 250 parts per million.

Underground Disposal shall mean the disposal of wastes by pumping or allowing to flow by gravity into the ground in such a manner as to enter the water-bearing strata of the earth. Such disposal is not to be permitted. This definition does not cover the use of tile fields in connection with septic tanks, or any other type of ground waste disposal subject to regulations of the State Board of Health.

Intermittent Discharge of Wastes shall refer to the practice of holding industrial wastes, domestic sewage, or mixtures of the two; or sludge resulting from the operation of plants, processes or systems for the treatment of the same, in lagoons, tanks or other suitable containers for discharge at appropriate times. Such lagoons, tanks, or other containers shall be considered waste treatment plants to be operated on permit of the Authority as specified by the Water Pollution Control Act and shall be operated in the manner specified by the permit.

Controlled Discharge of Wastes and other phrases or words of the same general intent shall be construed the same as Intermittent Discharge of Wastes.

Swamp Waters shall refer to waters whose topographical location is such as to cause them to have very low flow velocities, and certain characteristics different from adjacent streams.

Section II. Rules applicable to classes and standards.

1. In any case where the waters into which sewage, industrial wastes or other waste effluents discharge are assigned a different classification than the waters into which such receiving waters flow, the standards applicable to the waters which receive such sewage or waste effluents shall be supplemented by the following stipulation: The quality of any waters receiving sewage, industrial wastes or other waste discharges shall be such that no impairment of the best usage of waters in any other class shall occur by reason of such sewage, industrial wastes or other wastes discharges.

2. Tests or analytical determinations to determine compliance or non-compliance with standards shall be made in accordance with methods and procedures approved by the Water Pollution Control Authority. (In approving methods, so far as practicable and applicable, the Authority will be guided by the latest edition of "Standard Methods for the Examination of Water and Sewage" published by the American Public Health Association and the American Water Works Association.)

3. In making any tests or analytical determinations of classified waters to determine compliance or non-compliance of sewage, industrial wastes or other wastes discharges with established standards, samples shall be collected in such manner and at such locations as are approved by the Water Pollution Control Authority as being representative of the receiving waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto.

4. Natural waters may on occasion have characteristics outside of the limits established by the standards. The standards adopted herein relate to the condition of waters as affected by the discharge of sewage, industrial wastes, or other wastes.

Section III. Established classes for fresh surface waters and the standards of quality and purity which shall be applied thereto.

CLASS AA

Waters meeting State Board of Health regulations as suitable for use for domestic and food processing purposes with sterilization as only treatment required. Suitable also for uses requiring waters of lesser purity.

Quality Standards for Class AA Waters

Items	Specifications
1. Floating solids; settleable solids; oil; sludge deposits; tastes or odor producing substances.	None attributable to sewage, industrial wastes or other wastes.
2. Sewage or waste effluents.	None.
3. Dissolved oxygen.	Not less than 5 ppm.
4. Toxic wastes, deleterious substances, colored or other wastes or heated liquids.	None in amounts to exceed limitations set by State Board of Health for waters for this use.

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CLASS A

Waters meeting the State Board of Health regulations as suitable for use as swimming water. Suitable also for other uses requiring waters of lesser purity.

Quality Standards for Class A Waters

Items	Specifications
1. Floating solids; settleable solids; oil; sludge deposits.	None which are readily visible and attributable to sewage, industrial wastes or other wastes and which measurably increase the amounts of these constituents in receiving waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto.
2. Sewage or waste effluents.	None in such quantity or quality as to raise the Coliform bacteria count of these waters above 1000 per 100 ml.
3. Odor producing substances contained in sewage, industrial wastes or other wastes.	The waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto shall not have an increased threshold odor number greater than 8, due to such added wastes.
4. Phenolic compounds.	Not greater than 5 parts per billion (Phenol).
5. pH	Range between 6.0 and 8.0, except that swamp waters may range from pH 5.0 to pH 8.0.
6. Dissolved Oxygen.	Not less than 4.5 ppm, except that swamp waters may have a low of 2.5 ppm.
7. Toxic wastes, deleterious substances, colored or other wastes, or heated liquids.	None alone or in combination with other substances or wastes in sufficient amounts or at such temperatures as to be injurious to fish life or make the waters unsafe or unsuitable for bathing.

CLASS B

Suitable for domestic supply after complete treatment in accordance with regulations of the State Board of Health. Suitable also for uses requiring water of lesser purity.

Quality Standards for Class B Waters

Items	Specifications
1. Floating solids; settleable solids; oil; sludge deposits.	None which are readily visible and attributable to sewage, industrial wastes or other wastes and which measurably increase the amounts of these constituents in receiving waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto.
2. Sewage or waste effluents.	None in such quantities or qualities as to make the Coliform bacteria count of the waters exceed 5000 per 100 ml.
3. pH	Range between 6.0 and 8.0, except that swamp waters may range from pH 5.0 to pH 8.0.
4. Dissolved Oxygen.	Not less than 4.5 ppm, except that swamp waters may have a low of 2.5 ppm.
5. Phenolic compounds.	Not greater than 5 parts/billion.
6. Toxic wastes, deleterious substances, colored or other wastes, or heated liquids.	None alone or in combination with other substance or wastes in sufficient amounts or at such temperature as to be injurious to fish or make the waters unamenable to standard treatment processes intended to prepare them for domestic use.

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CLASS C

Waters suitable for propagation of fish, industrial and agricultural uses and other uses requiring water of lesser quality.

Quality Standards for Class C Waters

Items	Specifications
1. Floating solids; settleable solids; oil; sludge deposits.	None which are readily visible and attributable to sewage, industrial wastes or other wastes and which measurably increase the amounts of these constituents in receiving waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto.
2. pH.	Range between 6.0 and 8.5, except that swamp waters may range between 5.0 and 8.5.
3. Dissolved oxygen.	Not less than 4 ppm, except that swamp waters may have a low of 2.0 ppm.
4. Toxic wastes, deleterious substances, colored or other wastes, or heated liquids.	None alone or in combination with other substances or wastes in sufficient amounts or at such temperatures as to be injurious to fish life or impair the waters for any other best usage as determined by the Water Pollution Control Authority for the specific waters which are assigned to this class.

CLASS D

Temporary classification to be assigned waters receiving wastes for which no practicable means of treatment is known. Discharger of wastes shall make every reasonable effort to avoid creation of nuisance conditions.

As soon as feasible treatment processes are available, class D waters shall be reclassified to an appropriate class and further waste discharges governed accordingly.

Welfare, Public Department.

ADOPTED BY THE SOUTH CAROLINA BOARD OF PUBLIC WELFARE.

Pursuant to § 71-8, S. C. Code of 1952.

(Filed Secretary of State's office November 9, 1948.)

Public Assistance.

I. Determining eligibility.

1. The following methods for verifying age of applicants are approved:
 - a. Birth certificate of applicant. (Delayed birth certificates are acceptable if the preponderance of evidence does not indicate error.)
 - b. Baptismal, confirmation, or other church or parish records.
 - c. Certificates of registration issued not less than five years prior to application.
 - d. School records.
 - e. Bible or family records which appear beyond reasonable doubt to be authentic.
 - f. Records of social agencies dated not less than five years prior to application.
 - g. Other recorded evidence, indicating applicant's age, authentically dated not less than five years prior to application, including hospital records, tombstones, old family pictures or other possessions, insurance policies, licenses, trade union records, newspaper records, court records, etc.
 - h. United States Census records.
 - i. Military or selective service records.
 - j. Marriage records dated not less than five years prior to application.
 - k. Birth certificate of applicant's son or daughter showing parent's age; parent's age to be conclusively presumed as not less than fourteen years if not definitely shown on such certificate.

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1. Passports, naturalization papers, or immigration records.
- m. Where no other conclusive evidence of age can be established, affidavits from unrelated persons containing evidence of affiant's personal knowledge of applicant's age may be considered.
2. The following methods for verifying residence of applicants are approved:
 - a. City, telephone, and postoffice directories.
 - b. Series of receipts, such as rent, public utility, mercantile, insurance, tax, subscription to newspapers and periodicals, etc.
 - c. Church membership records.
 - d. Records of contracts with local officials, such as tax collectors, health authorities, school authorities, county officials, welfare workers, etc.
 - e. Records of credit associations, unions, fraternal organizations, etc.
 - f. Correspondence, showing address and date, covering sufficient period.
 - g. Affidavits from unrelated persons stating personal knowledge of applicant's place of residence.
3. The following methods for verifying citizenship of applicants for old age assistance are approved:

If applicant's signed application indicates his birth in the United States or in any of the territorial possessions after date of acquisition, United States citizenship is presumed. If the signed application indicates that applicant was born in a foreign country, or does not show the country of birth, United States citizenship may be established:

- a. By federal court record of naturalization, or verification of such record through the United States Immigration Officer located in the Custom House, Charleston, South Carolina, or at the port of the applicant's entry into the United States.
- b. By clearance with the Immigration and Naturalization Service in Washington, D. C., or at 216 N. E. Second Avenue, Miami, Florida, in cases where data obtained under (a) are not definite and conclusive.
- c. By inquiry of the United States Department of Labor as to naturalization records dated after September 27, 1906. Such records prior to that date are on file only in the respective federal courts granting naturalization rights. Inquiry directed to such courts should give full information as to date of naturalization and dates and places of applicant's residence in the United States.
- d. The constitutional disqualification "from being registered or voting" of persons convicted of certain crimes does not deprive such persons of citizenship within the meaning of that term as used in the South Carolina Public Welfare Act.

The following methods for establishing need of applicant are approved:

Standards for a "reasonable subsistence compatible with decency and health" have been established by the adoption of a Budget Guide, setting out the normal needs of an individual under various living arrangements, with tables of values for estimating the cost of supplying these needs. The Budget Guide also lists and evaluates resources normally available to an individual under differing normal living arrangements. The required investigation to determine the need of each applicant involves determination of the resources available to him, expressed in financial terms, and the difference between his total available resources so determined and his total need according to the established standards. This difference is the "budgetary deficit" in the case, and is the measure of the financial award which may be given the applicant, subject to adequacy of available funds and to maximum amounts prescribed by law.

Items of need, to be estimated in financial terms in each case, dependent on the applicant's living arrangements, are:

- a. Food—estimated according to dietary needs and current prices.
- b. Shelter—estimated according to ownership, rental, or other provision of necessary living quarters.
- c. Fuel—estimated according to applicant's necessity to furnish or his right to share.
- d. Lights—estimated according to type of facility available.
- e. Water—estimated according to type of facility available.
- f. Refrigeration—estimated according to need and type of facility available; maximum \$1 per month.
- g. Clothing—estimated according to applicant's age, sex, and environment.
- h. Household needs—estimated according to applicant's necessity to furnish or his right to share.

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- i. Medical care—allowable only for drugs and medical supplies shown by written statement of physician to be necessary.
- j. Medical chest supplies—allowable for necessary supplies for which no prescription is required.
- k. Incidentals—within a reasonable maximum.
- l. School supplies allowable for children actually attending school on an as-paid basis.
- m. Church contributions allowable where applicant contributes regularly.
- n. Boarding home care (except for dependent children)—estimated by allowance for subsistence items (a) to (m), inclusive; maximum, full amount of deficit up to legal maximum award.

Sources of available income and resources, to be estimated in financial terms in each case, depending on the applicant's living arrangements, are:

- a. Real estate holdings.
- b. Stocks, bonds, and other investments.
- c. Wages.
- d. Insurance, loan value, subject to exemption, (s) below.
- e. Postal savings accounts, subject to exemption, (s) below.
- f. Savings accounts, subject to exemption, (s) below.
- g. Pensions—Confederate, Spanish-American, World Wars I and II, railroad, and other.
- h. Compensation—workmen's, unemployment, veterans', etc.
- i. Old age and survivors insurance.
- j. Allotments and allowances from service men and women.
- k. Income from boarders, lodgers, etc.
- l. Income from farm, business, investments, etc.
- m. Income in kind, such as free fuel, free shelter, etc.
- n. Home produce.
- o. Lump sum receipts from insurance, sale of property, etc.
- p. Aid from relatives or others.
- q. Income from lodges, churches, sick benefit insurance, burial societies, etc.
- r. Exemptions:

- 1. Savings accounts—Possession of \$300 or less in savings by an applicant for old age assistance, aid to the blind, or general assistance, or of a total of \$600 or less in savings by the applicant and his or her dependent spouse, when neither applicant nor spouse owns a policy or policies of insurance with total loan value in excess of these amounts, shall not render the applicant ineligible.

Possession of \$300 or less in savings for personal use by an applicant for aid to dependent children, and of \$100 in savings for each dependent child, not exceeding a total of \$600 for the family, such savings to be reserved for expenses due to emergencies, last illness, and/or burial, shall not render the applicant ineligible.

- 2. Insurance loan value—Ownership by an applicant for any type of assistance of a policy or policies of insurance with total face value of not more than \$1000 shall not render the applicant ineligible for assistance except where the loan value of such policy or policies, plus any savings owned by the applicant, equals or exceeds the amount of exempted savings in item 1 above.
- 3. Insurance policies with face value of more than \$1000—Where an applicant for any type of assistance has an insurance policy or policies with a face value of more than \$1000 the field supervisor shall be consulted, final decision to be determined by the loan value of the policy or policies, feasibility of conversion of the amount of excess of \$1000, and other considerations.

5. The following methods for evaluating property as an available resource have been approved:

- a. Real estate:
 - 1. Ownership and use of real estate as a home does not disqualify a person for public assistance, but the value of its use as shelter is an available resource.
 - 2. Where non-dependent relatives or others use applicant's home for their personal benefit, a fair remuneration for such use is a resource available to the applicant.
 - 3. Income from real estate owned by the applicant but not used as his home is an available resource to the applicant.

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4. Real estate owned by the applicant but not contributing to his support is an available resource to the applicant if liquidation is practicable and would appreciably affect applicant's need.
- b. Personal property:
 1. Personal property which is not used by and which does not contribute to the support of the applicant is a resource available to the applicant, except where such property has genuinely sentimental value.
- c. Disposal of property, real or personal:
 1. Where property of an applicant has been disposed of otherwise than for the purpose of making him eligible for public assistance, the proceeds, in excess of \$300 placed in a savings institution, are a resource available to the applicant.
 2. Any benefits accruing to an applicant through collateral agreements between the applicant and the transferee of the property are a resource available to the applicant.
 3. Where applicant's real estate is disposed of through condemnation proceedings, settlement of the estate, forced sale, or other involuntary transfer, the amount realized by the applicant is a resource available to him except insofar as reinvested in the purchase and occupancy of a home by the applicant.
6. The following methods governing the evaluation of aid from relatives or from other sources as a resource available to the applicant for or the recipient of public assistance have been approved:
 - a. Only such aid from relatives or from other sources as is actually and regularly available to the applicant or recipient may be taken into consideration in determining his eligibility for public assistance.
 - b. Assistance in the form of cash, necessities of life, or necessary personal care, actually and regularly available to the applicant or recipient from relatives or from other sources, must be taken into consideration in determining his eligibility for public assistance.
 - c. Care must be exercised to see that relatives do not unduly lower their own standard of living in order to aid the applicant or recipient, as well as to see that relatives do not directly benefit from assistance granted.
 - d. No representative of the department of public welfare, state or county, may undertake formal proceedings to require full or partial support of an applicant for or recipient of public assistance by a relative, whether or not such relative is legally obligated to provide such support; but other efforts, short of legal proceedings, may be employed to that end.

II. Review and hearing.

1. The following procedure for considering demands for review, provided for in Sections 71-54 to 71-59, has been approved:
 - a. The county director of public welfare shall assist the applicant or recipient in preparing the required written request for review and hearing.
 - b. The field supervisor, at the earliest convenient time, not more than ten days after receiving from the state department notice of the appeal, will review the case history with the county department to see if regulations will permit adjusting such complaints prior to the hearing by clarification of incorrect evidence, elimination of error, or interpretation of policy. If it appears that adjustments can or should be made, the county department will undertake them to the end that uniformity of regulations is followed. The county department, after a request for a fair hearing has been forwarded to the state department, may review its own action and upon such reconsideration amend or change its decision prior to the time set for the hearing. The county director shall notify the applicant or recipient, in writing, of any such later action taken, at the same time informing him that he is entitled to demand a review by the state department of such later action.
 - c. The state department of public welfare, through its authorized representative, shall fix a time and place, conveniently accessible to the applicant or recipient, for hearing his demand for review, giving him reasonable advance notice of such hearing.
 - d. The hearing, or rehearing, of any demand for review shall be conducted by an authorized representative of the state department of public welfare; provided

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however, that no representative of the state department who has taken part in the action involved shall conduct such hearing.

- e. The county department whose action is sought to be reviewed shall be represented at such hearing or rehearing by the county director or his designated representative.
- f. An adequate record of the proceedings at any hearing or rehearing shall be transmitted to the state department of public welfare, and a copy shall be filed with the county department of public welfare and shall be open to inspection by the applicant or recipient within a reasonable length of time.
- g. The state director of public welfare shall, within fifteen days after hearing or rehearing, notify both the applicant or recipient and the county director of the action taken by the state department upon any demand for review.

III. Continuing assistance to recipients leaving county.

1. The following regulations with respect to continuing assistance to recipients who have left the county of original eligibility have been approved:
 - a. A recipient of public assistance who removes to another county within the state may continue for not more than three months to receive assistance through the county of original eligibility.
 - b. Where a recipient of public assistance removes to another county within the state, his eligibility for assistance in that county shall be determined by the county department of public welfare within three months after notice of his removal to the county.
 - c. Where a recipient of public assistance removes to another state he may continue to receive assistance through the South Carolina Department of Public Welfare in the following circumstances:
 1. Where a reciprocal agreement is in effect between the South Carolina Department of Public Welfare and the public assistance agency of the state to which the recipient has removed, providing for continued receipt of assistance by eligible recipients during the residence period required.
 2. Where no such reciprocal agreement is in effect, the recipient may continue to receive assistance through the South Carolina Department of Public Welfare for not more than one year if the public assistance agency of the state to which the recipient has removed certifies to the South Carolina Department of Public Welfare that the recipient continues eligible in all respects other than as to residence requirements; except that
 3. Where eligibility in all respects other than as to residence requirements is shown by adequate review to continue longer than one year from the date of the recipient's removal to such other state, assistance through the South Carolina Department of Public Welfare may be continued only upon specific authority of the South Carolina Department of Public Welfare.

IV. Payment of assistance.

1. All awards of public assistance shall be payable by check directly to the recipient or to his legal guardian.
2. No restriction upon the use of assistance funds by the recipient or his legal guardian shall be imposed by the state or county department of public welfare.
3. Prior to the beginning of each fiscal year the state department of public welfare, upon the basis of data from all county departments of public welfare, shall determine the proportion of the case deficit in each type of public assistance which can be met with funds available, and awards shall be limited to such proportion of the recipient's deficit; provided, however, that in cases of special need the state department may, upon proper showing of such need, authorize a higher award.
4. The minimum monthly award to an individual as public assistance shall be four dollars (\$4.00); provided, however, that where the deficit is four dollars (\$4.00), or the authorized proportion of the deficit is less than four dollars (\$4.00), the minimum amount shall be awarded.

V. Confidentiality of public assistance records.

(Filed Secretary of State's office December 31, 1941.)

In compliance with requirements of the State law, the following rules and regulations are established:

1. Information contained in applications for public assistance, or general relief, reports of investigations, reports of medical examinations, correspondence, and other records concerning the circumstances or condition of any person from whom or concerning whom such information is sought or obtained, together with lists of names and addresses of such applicants or persons, any records of the department's evaluation of such information, any unrecorded information relating to individual public assistance cases, are privileged and confidential, and are in the exclusive custody and control of the State Department of Public Welfare; and their use, transmittal, or disclosure for purposes other than those directly connected with the administration of public assistance or general relief is prohibited by the law above quoted.
2. Such confidential information may, under these rules and regulations, be disclosed to any agency or department of government from which an applicant or recipient has requested assistance or services, provided such agency or department of government shall furnish the State Department of Public Welfare satisfactory evidence that it has complied with the provisions of the State law requiring the adoption of regulations to prevent the use or disclosure of such information except for purposes directly connected with the administration of public assistance or general relief; but no such agency or department of government shall be furnished with any general list of names and addresses of recipients of public assistance or general relief. Such agencies or departments of government as the Bureau of Old Age and Survivors' Insurance, State Unemployment Compensation Commission, Federal Probation Department, Veterans Administration, American Red Cross, Vocational Rehabilitation Service, State Probation and Parole Board, Industrial Commission, State Department of Labor, State Department of Health; may be furnished such information under the provisions of this paragraph.
3. Such confidential information may, under these rules and regulations, be disclosed to such established private welfare agencies as the American Red Cross, United Service Organization, incorporated Family Welfare Associations, the Travelers Aid, Social Service Exchanges, etc., from which an applicant or recipient has requested assistance or services, provided such private welfare agency shall furnish the Department of Public Welfare with satisfactory evidence that it has adopted regulations to prevent the use or disclosure of such information for purposes not directly connected with the administration of public assistance or general relief; but no such private welfare agency shall be furnished with any general list of names and addresses of recipients of public assistance or general relief.
4. Such confidential information may, under these rules and regulations, be furnished to any individual establishing a reasonable basis for requesting same, provided such individual gives assurance, in writing, to the Department of Public Welfare, that such information will not be used in violation of the provisions of the State law above quoted, nor in any manner not directly connected with the administration of public assistance or general relief; but no individual shall be furnished with any general list of names and addresses of recipients of public assistance or general relief.
5. General information, not identified with any individual applicant or recipient, such as total amounts expended, number of recipients or applicants, and other statistical information and data contained in general studies, reports, or surveys of welfare problems, may be furnished upon request of any citizen or organization.
6. Information obtained in confidence from outside sources must not be disclosed to the applicant or recipient involved; but data presented and recorded at a fair hearing upon review may be made available to the applicant or recipient and his representative.
7. Authority to disclose confidential information in accordance with these rules and regulations is limited to the county director of public welfare in each county. In cases not covered under paragraphs 2 and 3 and where the county director is uncertain as to his authority to disclose the information requested, he shall refer

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the request of the State Director for decision, and that official is required to report to the State Director, in writing, the receipt of any request for such information and the disposition made of such request. In cases where the County Director is uncertain as to his authority to disclose the information requested, he shall refer the request to the State Director for appropriate action.

8. All public assistance records must be kept in locked files; or pending the securing of such locked files, such records shall be kept in substantial file cabinets in quarters constantly and adequately protected, by locking, against inspection by unauthorized persons.

VI. Determining eligibility.

A. The investigation. Before assistance may be granted to any person a complete investigation and report must be made concerning each factor of eligibility. It is important that the investigation concerning eligibility be made clear in the record.

B. Verification. 1. **Citizenship.** Where the applicant's birthplace is not in the United States or territorial possessions, proof of United States citizenship shall be the responsibility of the applicant and must be supplied by documentary evidence. Such documents should consist of citizenship papers, or certification by the department of labor of derivative citizenship acquired through the nationalization of parents, treaty agreements, etc. True copies of such papers shall become a part of the case record.

2. **Age.** South Carolina has required birth registration only since 1915 (See Section 5130, S. C. Code, 1932). Since this is the case less accurate means of registration will have to be used to verify age for old age assistance. The following documents may be considered reliable sources of verification:

- a. Marriage certificates having the date of marriages, birthplace, and the ages of the contracting parties.
- b. Birth certificates of children of applicants, those certificates showing the age of the parents at the time of the children's birth.
- c. Ages of sons and daughters when these are sufficiently advanced; but these must be verified.
- d. Naturalization papers which sometimes give the age at the time of naturalization; but in all cases indicate that the person was twenty-one at that time.
- e. Passports and service books of immigrants.
- f. Parish records and baptismal certificates.
- g. Bible records or other written family records; birthday books, old embroidered samplers; old family pictures with dates and ages, etc. State type of family record used for verification.
- h. Insurance papers. The frequency with which people under-state their age for insurance purposes makes them unreliable when they indicate that the insured is under seventy, but fairly conclusive evidence that a person whom they show to be seventy is at least that age.
- i. Employment records.
- j. School records. These are occasionally, but not ordinarily, available.
- k. Records of trade unions, fraternal societies and other organizations.
- l. Federal or state records in the case of those who have been in civil or military service of the nation or State.
- m. Daughters of American Revolution records.
- n. Hospital records, or those of physicians.
- o. Vaccination certificates.
- p. Enrollment records of voting districts where these show the actual age of the voter and not merely that he had passed a certain age.
- q. Local census records which may give birth date and place. National census records—bureau of the census, Washington, D. C.
- r. Records of town, country or city public welfare officials and of private welfare organizations in the cases of persons who have been aided by either.
- s. Savings bank records. Depositors are sometimes required to give age at time of opening account.
- t. Tombstone record when stone has been erected in anticipation of death.
- u. Old licenses of various kinds (such as hunting, fishing, and liquor licenses) sometimes carry age.
- v. Affidavit of responsible person if it is based on personal knowledge of facts which will determine the problem of age.

It should be kept in mind that in the past persons may have failed to reveal their true age because of the desire to retain employment or secure insurance. If the applicant has mis-stated his age in the past, some definite confirmation to offset this should be recorded.

3. **Residence.** From the record of the first interview, exact addresses in towns or descriptions of the location of home should be available to the person undertaking the verification. The following sources for verification are presented in the order of their significance:

- a. Rent receipts.
- b. Landlords.
- c. Neighbors.
- d. Employers.
- e. School attendance records of children.
- f. Merchants and professional persons serving the applicant.
- g. Personal knowledge of the worker.
- h. Local directories.
- i. Census records.
- j. Public utility receipts.
- k. Newspaper items.
- l. Civil registration.
- m. Tax receipts.
- n. Birth records of children.
- o. Addresses on old letters if date of postmark is clear.
- p. Records of other social agencies, trade unions, fraternal societies, etc.

4. **Relatives responsible for support.** Responsible relatives should be personally interviewed by the worker if this is possible. There must be no exception to the interview of the father of dependent children unless careful investigation proves that his whereabouts are not known. A report of the extent of the effort made to locate him should be recorded in the case record.

5. **Wages.** Wages may be verified through the employer if it is known that some member of the family is working.

6. **Income from investments, pensions, bank accounts, etc.** The value of all investments should be definitely determined and the amount of pensions (except Confederate pensions). Bank accounts may be verified by bank clearance, form DPW 108. Client's authorization, DPW 108A, for securing this information will have been obtained at the time of application.

7. **Insurance.** Insurance assets can be verified, using form No. DPW 109, data on insurance. Client's authorization, DPW 108A, for securing this information will have been obtained at time of application.

8. **Property.** Form No. DPW 107, entitled data on real estate, should be used in verifying.

9. **Income from CCC, WPA, or other federal agency** may be verified by reference to the nearest office of such agency.

10. **Relationship of child to relative with whom the child lives** is to be verified in the case of applications for aid to dependent children when the child is living with other than one or both parents. Parentage may be verified through birth registration, physicians' records, or statements of reliable references.

11. **Blindness.** Verification of eligibility on grounds other than the condition of the sight shall be completed before plans are undertaken for the verification by physical examination of the fact that the applicant is blind within the meaning of the law.

VII. Computing budgets.

A. **Standard budgets.** Standard guide to be used in developing budgets will be furnished by the state department of public welfare. These guides are not incorporated herein as they will change from time to time as living conditions and available funds change.

Budgets made shall compare income and estimated minimum needs. The standard budget will include:

1. **Need.** Allowance shall be made in accordance with the current standard guide for the following items—

- a. Food.

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- b. Rent
- c. Fuel
- d. Light
- e. Clothing
- f. Medical care
- g. Insurance.
- h. Other expenses
- i. Incidentals

2. Income. The total of any regular resources should be carefully computed and deducted from the total budget of the family needs to indicate a budgetary deficiency. Income to be deducted may include:

- a. Wages received from part-time work on the part of an applicant who is unable to secure regular work and is otherwise eligible.
- b. Any income from property or other sources.
- c. Contributions from relatives, friends, churches, lodges, etc.
- d. Produce raised. If this produce is sold the cash realized should be counted as income on exact basis. If it is used by the family it will be accounted for by omitting these items from the budget when the produce is available.

VIII. Amount of assistance.

Pending further action of the South Carolina board of public welfare, the assistance granted to any person, under any category, shall not exceed 66⅔ per cent of the budgetary deficit, i.e., the amount by which the applicant's computed needs exceeds his total income (resources), unless such percentage of the budgetary deficit is less than \$4.00 per month; provided that the minimum grant shall be \$4.00 per month.

A. For old age assistance. According to the act, assistance to the aged shall be determined by the county department with due regard to the conditions existing in each case. It shall be sufficient, when added to other income and support of the recipient, to provide such persons with a reasonable subsistence comparable with decency and health, provided that such amount of assistance shall in no case exceed \$240.00 annually.

B. For dependent children. In granting aid to dependent children the amount granted shall not exceed \$15.00 per month for one child in any home, nor \$10.00 for each additional child in the same home.

C. For the blind. The amount of assistance which any such person shall receive shall be determined by the county department after making such investigation as is necessary or required by the state department, with due regard to the resources and necessary expenditures and the conditions existing in each case and shall be sufficient, when added to other income in support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health, not to exceed \$300.00 in any year, payable in such monthly installments as the county department may determine subject to the approval of the state department.

D. For general assistance. "Upon the completion of the investigation the county department shall decide whether the applicant is eligible for assistance under the provisions of part 6 of this act, the amount of assistance which any person shall receive shall be determined by the county department with due regard to the resources and necessary expenditures of each case, and the conditions existing in each case in accordance with the rules and regulations made by the state department and shall be sufficient when added to all other income and support of the applicant to provide such person with a reasonable subsistence compatible with decency and health. In one case shall more than one hundred and twenty (\$120.00) dollars per year be granted to any individual recipient from State funds provided a county, and the total assistance to any recipient, including both State and county funds shall not exceed three hundred and sixty (\$360.00) dollars in any year."

E. For needy unemployed. 1. Awards to cases found eligible for relief to the needy unemployed cannot exceed \$20.00 per month.

2. All payments will be made monthly and by check.

IX. The granting of assistance.

A. Authorizing assistance. Upon completion of its investigation the county department shall decide whether the applicant is eligible for assistance under the provisions of the South Carolina public welfare act, and determine the amount of such assistance and the date on which such assistance shall begin.

1. Regular grants for special assistance. A regular and continuing grant for special

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assistance is not to be made until the investigation is complete and it has been determined whether the client is eligible and, if he is, to what type of assistance. At the time of application the applicant should sign the application form for special assistance, if the situation as presented seems to bring him within one of these classifications.

When a case is transferred from one classification to another, it should be closed in the classification in which it has been carried by the use of the proper form. When an individual previously carried as a member of the grant group in one classification becomes eligible for some form of grant in his own right he should make separate application and relief is authorized for the new applicant by the same procedure as if he had not previously received assistance, and the budget of the original case is adjusted.

2. Grants for general assistance. Grants for general assistance may cover relief given to meet the needs of any individual or group not receiving special assistance. If it is understood that eligibility exists for special assistance and general assistance is being given, all necessary procedures should be taken without delay for opening the case to some form of special assistance.

3. Appointment of responsible person. "If an applicant or recipient shall be found by the county department to be incapable of taking care of himself or his money, or if in the discretion of the county department his interest will be best served, the state department, or one designated by it, may apply to the probate court of the county in which such applicant or recipient lives for the appointment of a guardian, to whom the payments of assistance granted shall be made for the benefit of the applicant or recipient, and such guardian shall file a copy of his return with the county department as well as with the probate judge, as now required by law, and such other reports as the said county department shall require. *Provided*, that the respective probate guardianship shall serve without charging any fees, costs or commissions."

Where a responsible person has been appointed, entries on the payroll (Form PW-1) and checks will be made out to the person legally responsible for the client. In order to support such payroll entries and checks signed, duplicates of Form DPW-123 must be mailed to the state office to be filed with Form PW-24.

B. Change of status of special assistance grants. Changes in the status of special assistance grants may be occasioned by changes in the status of the individual case or by the funds available.

1. Change in amount of grant. The amount of grants once established will not be changed unless careful investigation reveals some relatively permanent change in the case situation; for instance, a recent diagnosis of tuberculosis for some member of the family necessitating special diet; the addition of a member to the family or the dropping out of a member.

2. Suspension of grant. There will be occasions when a temporary change in the case situation makes a suspension of assistance advisable. This would happen where a client visits out of the State for a sufficient length of time to warrant a temporary withdrawal of grant but where he has no intention of remaining away. Another instance would be the inheritance of a legacy large enough to meet the needs of the individual or group for several months.

If a client moves from one county to another within the State without notifying the county where he has been receiving assistance of his intention, his grant should be immediately suspended. It may be reinstated according to procedure for transfers (see section B-3 following), upon verification of his continuing eligibility in the county to which he has moved.

3. Transfers. **A. Transfer of applications:** 1. Clients who apply either for general or special assistance in a county other than that of which they are residents should receive the necessary work services of that county department and investigation must be made to establish residence and to assemble all possible information on the case. The application should then be forwarded to the county of the applicant's residence for further investigation and for final action by the county board in that county. Should the client be a resident of an out-of-state county his application should be routed through the case correspondent of the division of field service, South Carolina department of public welfare, for transfer.

2. Applications for such general or special assistance made in the county of the applicant's residence, either by person or by letter, while the person is residing temporarily in another county should be accepted and after all possible local investigation is made a request for additional information which is available only in the county in which the

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applicant is living should be requested from that county in the same manner as any other out-of-town inquiry is handled.

B. Transfer of cases—1. Requests for transfer originating in a county where either special or general assistance has been granted should be thoroughly discussed with the client in order to obtain his reasons for desiring to move and what living arrangements are possible for him in the county to which he is moving. A summary of the case should then be sent to the department in the county to which the client wishes to move and a request made for investigation as to the social desirability and permanence of this transfer and for authorization from that county for completion of the transfer. Upon action by the county board in the receiving county, notice of this action will be given by letter to the county department in which the request for transfer originated.

2. When requests for transfers originate in a county to which a client wishes to move the director of this county should notify the department from which the applicant has been receiving assistance, of this request and the reasons for it and request a summary of the case. Upon receipt of this information the necessary investigation will be completed to determine the social desirability and permanence of the transfer. Upon final action by the county board in the matter the county department from which assistance has been received should be notified by letter of the final action taken by the board and the transfer should be authorized.

C. Procedure for transfer of closed cases—Where requests for transfer come from clients whose cases have been closed in one county the county department to which the new application is made should request the county which formerly gave assistance for a summary of the case and copies of all affidavits should be made to prove eligibility. Upon receipt of this information the county department will then complete the necessary investigation and present the case to the county board for final action.

D. Copies of all correspondence relative to transfer of applications and cases should be forwarded in duplicate to the district field supervisor. If the transfer is inter-district, the district field supervisor will be responsible for routing a copy to the district field supervisor of the other county involved.

4. Discontinuance of grant. Whenever information obtained or received by the county department indicates that a given client is no longer eligible for the grant that he is receiving, this fact should be discussed by the worker with the client. An explanation should give the client an understanding of his loss of eligibility. The case record should set forth clearly the information and the grounds upon which the decision is based. At this time his right of appeal, if dissatisfied, should be called to his attention. Grants may not be discontinued or changed until long enough after notification of the client of the proposed change or discontinuance for him to have an opportunity for appeal without losing the benefit of his grant. In addition, formal notice in writing of the discontinuance of assistance or change in amount with the reasons for it, must be sent to the client.

When a security grant is discontinued a special closing card is made out for the federal security statistical study. The proper form, R 201.2 for O.A.A.; RS 202.2 for A.D.C.; or RS 203.2 A.B.; should be filled out at the time of closing.

5. Limitation on use of federal-state funds. Federal funds and funds which have been matched by the federal government may not be used for any other purpose than money payments to:

a. The needy aged who are sixty-five years of age or older, who are not inmates of public institutions, and who meet all other eligibility requirements contained in the plans submitted to and approved by the social security board.

b. Dependent children who are needy, who are under age of sixteen, who have been deprived of parental support or care by reason of death, continued absence from home, or physical or mental incapacity of the parent, who are living with such relatives as are designated in the S. C. public welfare act.

c. Blind persons who are in need and who are not inmates of public institutions.

All such funds may be used only for payments in cash to the approved applicant for his own use.

Funds for any of the three public assistance categories may not be used by persons other than the applicant (except the enumerated relatives of a dependent child) to pay for supplies, material or services furnished the individual, institutional or other care, medical or surgical treatment, funeral or burial expenses, or vocational or other training or instructions. Payments on behalf of a recipient of old age assistance or aid to the blind may be made to a guardian appointed by a court of competent jurisdiction.

Such funds may not be used for payments of wages or compensation in respect to

work done or services rendered for the individual to whom they are granted, or for that part of the first payment made to or with respect to an individual under the State plan which is for a month prior to the month in which the payment is made.

X. Future case contacts.

A. Home visiting. Following the original investigation and the granting of assistance to those applicants who are eligible, the contact with the family should be kept up by recurrent home visits at least once every six months. Each case must be considered on an individual basis and where special circumstances indicate the need, the visits should be made at the discretion of the visitor carrying the case.

The other objective in home visiting in such service as is within the time and skill of the worker to give in improving the health, morale, and general wellbeing of the client group.

B. Recurrent investigation of need aside from home visiting. A complete semiannual review of the need of persons receiving special assistance grants will be made unless information is received indicating immediate review. At the close of this review a new budget should be made. Wherever information is received of a change in resources or assets, reinvestigation should be undertaken at the time of receipt.

C. Reporting of changes of case data to county and state office. All information obtained or received by the county department should be recorded in the case record. In addition, any change of address, of composition of the family group, corrections in name, or other information affecting the issuing of grants by the state department, should be reported to that department on the form provided, and such changes should at the same time be recorded in the files of the county offices in accordance with the instructions regarding the keeping of these forms. All changes in the case plan, which are reflected by these data, should come to the county director or case supervisor for review and approval before the information is transmitted to the state department.

D. Appeal from agency action subsequent to granting assistance. The same right of appeal to the state department is granted a client receiving special assistance who after receiving assistance is declared ineligible and from whom assistance is withdrawn, as is granted the applicant who is rejected at the time of his original application. A delay of over sixty days in making a decision regarding an application is also grounds for appeal. This should be explained to the client wishing to appeal on the grounds of undue delay, and he should be given an opportunity to talk with the director. If he were still dissatisfied with the explanation, the director should assist him in making appeal.

E. Refunds. A procedure will be set up in the financial department by which the county department may receive from clients refunds of money given as assistance grants through misrepresentation or lack of knowledge of the client's original or changed circumstances. Wherever it is learned that a client had assets not declared or discovered at the time of application, he should be asked to refund the amount received as assistance, either in whole or in part. Such funds should be transmitted to the state department. The county department may also be empowered to receive funds from relatives or interested individuals who wish to assist an applicant, when they believe that such a person is not competent to care for their contribution. This procedure would most often be used in connection with payments by relatives for the care of minor children.

XI. Procedure on special and general assistance cases. A. County action. 1. At the completion of the investigation the worker handling the case will see that all required forms are properly filled out. Special care must be taken that all forms carry the necessary signatures.

2. The county director or case supervisor should review the case, signing those applications which are approved; they should also be signed by the chairman of the county board. If, at any stage, the evidence already collected on investigation clearly shows that an applicant is not eligible, the inquiry may be discontinued. The reason for rejection should be clearly stated. In such cases the word "Rejected," with the date and the signature of the county director, will be written diagonally across the space which would otherwise contain the signature.

3. As investigations are finally completed, it is the responsibility of the county director to transmit the proper records on all approved applications to the state department. This will represent to the state department authorization for issuance of a grant.

4. Formal written notices must be given to the applicant of the decision regarding his application and the amount of the grant will be received if his application is approved.

B. State action. 1. Supervisory reviews. The district supervisor of the state depart-

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ment will review a sampling of case records including applications accepted and rejected both at intake and after investigation. In this way the state department will have knowledge of intake practices in the counties as well as a knowledge of all practices with respect to cases.

2. Action on request or review. In the local office all complaints are referred to the county director, who shall attempt to adjust the complaint by clarification of incorrect evidence, elimination of error, or interpretation of policy to the applicant. Failing to make this adjustment, the director shall explain to the applicant or recipient his right to request review of his case by the state department as provided for in South Carolina Public Welfare Act, Part 2, Section 17.

The county director shall assist the client who is requesting a review of his case by the state department in preparing his formal request on DPW Form 117 and will forward, together with all other records of the case, the original and duplicate of this form, to the district field supervisor. The triplicate of DPW-117 should be retained in the county file.

If in the opinion of the applicant or recipient a decision of the county department, in the matter of rejection for assistance, discontinuance of assistance, or change in the amount of the grant, is unjust, or if there has been unreasonable delay in action on his application, he may request review of his case.

The field supervisor, through the chief of the division of field service, will make arrangements within reasonable time for this hearing at a point accessible to the client, preferably the county seat, and the client may bring such witnesses as he desires. The hearing shall be conducted either by the chief of the division of field service or the field supervisor. Representatives of the county department will be present. The client may be present or be represented and may have such witnesses as he desires.

The applicant will be given sufficient advance notice of the time and place of hearing to enable him to arrange to be present or represented. A stenographic record of the proceedings will be made. This record, together with recommendations of the state department representative conducting the hearing, will be presented to the case review committee, consisting of the state director, the chief of the field service division, and the chief of the assistance division affected. In the case of disqualification or inability of any member of the case review committee to serve, the state director shall appoint the field supervisor from a district other than that in which the appellant resides.

The county department will be notified on the original Form DPW-117 as to the final decision of the state department which, in accordance with section 17 of the South Carolina public welfare act, shall "become final and effective as of such date as the state department shall fix." At the same time, the client will be notified by letter as to the final decision in his case.

XII. Statistics and finance. A. Reports, etc. All statistical data, financial reports, cash relief rolls, requests for supplies, requisitions for purchases, vouchers, and all other matters pertaining to statistics and finance shall be made and filed on forms prescribed by the state department, in such manner as the state department may from time to time determine.

In no case shall the employees of the county departments or of the state department of public welfare, other than the chief of the finance division, have authority to change any instructions pertaining to accounting forms or to alter the design of any accounting forms.

B. County department expenses. Beginning with the fiscal year commencing July 1, 1938, all expenses incurred by county departments for rents, salaries of janitors or maids and electricity services shall not be paid by the department of public welfare for the reason that no appropriation therefor was included in the general appropriation act for the fiscal year 1938-1939.

C. General relief funds. Before any general relief funds will be matched by the funds of the state department of public welfare, the county treasurer of the respective counties must furnish the department with a certificate that the county has appropriated and made available from its own funds a sum of money to be used solely for the care and support of persons who are not eligible for other forms of assistance provided in the public welfare act, and, further, that such sum of money has been set aside in a separate account on the books of the county treasurer which is to be titled "..... County General Relief Fund."

It is permissible to charge to the above mentioned account, only warrants drawn for the

purpose of paying claims for assistance to persons approved for this type of aid by the county director of the county department of public welfare, included on assistance rolls prepared and approved by the finance division of the state department of public welfare. Amounts expended for pauper burials, salaries, bank service charges, or any other expenses of the county are not chargeable to this account and cannot be paid from general relief funds.

In paying awards for this type of assistance, either of two methods is acceptable to the state department. (1) The usual county warrants for each individual award may be prepared and used in effecting such payments, or (2) one warrant may be drawn for the total amount of the monthly assistance roll as prepared and approved by the finance division of the state department of public welfare. If the last mentioned procedure is adopted, the warrant for the total of the assistance roll must be deposited in a local bank and individual checks drawn for the several awards included on the roll. Such checks, however, must in every instance, be counter-signed by the county treasurer or other finance officer of the county before they are delivered to the clients. In no case is it permissible for a county director of the county department of public welfare to release assistance checks for general relief payments which do not bear this counter-signature.

When funds are available by a county for this class of assistance, such funds cannot legally be ear-marked for disbursement to any particular group of persons or to any particular area, other than the entire county involved.

Individual payments are to be paid monthly and cannot exceed \$30.00 per month to any individual, of which not more than \$10.00 in any one month may be paid from State funds.

General relief funds held by county treasurers will be audited by representatives of the state department of public welfare at such times as the department may deem advisable.

XIII. Employment policy and procedure. A. Method of selection and appointment.

1. State staff. a. The director is selected by the state board of public welfare as provided in South Carolina public welfare act, part 1, section 4. He "shall hold office until his successor has been elected and qualified; the said director shall execute the decisions and carry out the policies of the said board and see that the laws relating to the activities and responsibilities of the said board are obeyed; he shall receive such salary as the board shall fix (not exceeding thirty-six hundred dollars (\$3600.00) unless the General Assembly shall fix his compensation in the annual appropriation act or otherwise."

b. Division heads. All appointments of heads of divisions—public assistance; the blind; child welfare; field service; research and statistics; finance—will be made by the director, "With the approval of the board . . . and the board shall fix their compensation unless the General Assembly shall do so, but in no event shall the said board expend any sums for purposes unauthorized by law. All such compensation shall be fixed by the said state department which shall submit to the state budget commission all proposed salaries not fixed by law, and it shall be the duty of the budget commission to pass upon the said salaries so that amounts paid shall be in keeping with the salaries paid to other state employees for a similar service and duties."

c. Field supervisors will be appointed by the director with the approval of the state board.

"The state director is also authorized to appoint and employ, with the approval of the board, such other officers and employees as are authorized by this or other acts as may be necessary to perform the duties placed upon the said department by law."

d. Division assistants. Such additional workers as are needed in the various divisions will be selected by the division heads, with the approval of the director and state board.

2. County staff. a. The director. The law provides as follows: "There is hereby created in each county of the state a board of public welfare—to be composed of three members who shall be appointed by the state board upon the recommendation of a majority, including the Senator, of the county legislative delegation. . . ."

"Subject to the rules and regulations of the state department, each county board shall select a director . . . to discharge the duties of such office. Salaries of county directors shall be fixed by the state department (not to exceed twelve hundred dollars (\$1200.00) in any case) but county boards may increase salaries paid their directors with any funds at their disposal other than supplied them through the state department."

b. Other staff members. "Each county board shall submit to the state department at such times as the latter shall require its estimate of the necessary administrative expenses and expenditures in the county which, when approved by the state department,

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shall be authority for the county board to engage such other agents and employees necessary in executing the duties and activities delegated to the said board. All such agents and employees shall measure up to the standards fixed by the state department as to education, training, fitness, and experience in social work."

The county director shall have the privilege of naming the county staff, subject to the approval of the county board. Salaries of county staffs, other than the director, will be fixed by the state department.

B. Employment procedure. 1. Appointment. After application form PW 15 has been filed and selection made, recommendation of appointment, form PW 16 should be completed by the director of the county department or the division chief and forwarded to the chief of the field service division or the state director. After approval, one copy of this form shall be returned to the county as authority for employment of the applicant. Travel authorization for the employee, form PW 13, will also be forwarded at this time to the county. A letter of appointment shall be sent by the state or county director, as the case may be, to the applicant. This letter shall state the date of appointment, division of department, or in case of county, position on county staff, title, location, salary, date on which duties are to commence, and whether or not position carries travel allowance.

2. Tenure. Term of employment of new workers shall be for six months, it being understood by both the department and the employee that if employee's service is satisfactory at the end of six months, employment will be continued for the period of satisfactory service.

3. Promotion. a. County staffs. Increase of pay or change of status, form PW-17, shall be recommended by county directors and approved by county boards and field supervisors, but no action shall be taken until recommendations have been approved by the state department.

b. State staff. Promotion of state staff shall be recommended by division heads and approved by the state director on form PW-17.

4. Resignation shall be in writing and shall give one month's notice unless there is an emergency situation. The reason or reasons for resigning should be stated. Form PW-17 should be sent to the state office.

5. The state and county directors may request the resignation of staff members for cause which shall be stated. The following may be considered causes for removal:

a. That the employee is incompetent or inefficient in the performance of his duty.

b. That the employee has been wantonly careless or negligent in the performance of his duty or has been brutal in his treatment of public charges, fellow employees, or other persons.

c. That the employee has some permanent or chronic physical or mental ailment or defect that incapacitates him for the proper performance of his duties.

d. That the employee has violated any lawful official regulation or order or failed to obey any lawful and reasonable direction given by his superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in a lower morale in the organization or to result in loss or injury to the State or the public.

e. That the employee has been wantonly offensive in his conduct toward fellow employees, wards of the State, or the public.

f. That the employee has taken for personal use a fee, gift, or other valuable thing in the course of his work or in connection with it when such fee, or gift, or other valuable thing is given him by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

g. That the employee is engaged in a private business or in a trade or occupation when the duties of his position as prescribed by the law or regulation require his entire time for their performance.

h. That the employee has failed to pay or make reasonable provision for the future payment of just debts when annoyance is caused a superior officer or scandal is caused to the service by such failure.

i. That the employee has used, or has attempted to use, his position for the political advancement of himself or any other person.

The employee shall be given one month's notice. Upon recommendation of county director, or division head in the case of a State employee, accrued vacation may be granted. In rare instances, if the good of the department, either State or county, demands it, the

immediate resignation of an employee may be requested, in which case one-half month's salary shall be allowed.

6. Appeals from request for resignation. The appeal shall be made in writing and shall cover reasons for disagreement with causes stated in letter requesting resignation, and shall be accompanied by supporting evidence. It shall not be simply a statement of rebuttal.

a. County departments. If the requested resignation is that of a county department worker, the appeal shall be made first to the county board. The county director shall be present at the appeal hearing and shall participate in the decision.

The worker affected may appeal further to the state department which shall grant a hearing, if the facts presented warrant this action. Present at such a hearing shall be the state director, the division heads, the field supervisor and the county director.

Should the requested resignation be that of a county director, the chairman of the county board shall be present at the state department hearing. If the state department upholds the decision of the county department, the matter shall be considered finally settled.

If the state department reverses the decision of the county department, the county director shall see that the state department's decision becomes effective immediately. If the worker, the appeal shall be heard by the state director and the division heads. If the request for resignation is upheld the employee may appeal to the state board. If the state board upholds the decision, the matter shall be considered finally settled.

b. State department. If the requested resignation is that of a state department without loss or prejudice to the employee being reinstated. The same applies to the county board in the case of a county director.

If the state board reverses the decision the state director shall immediately carry out the decision of the state board, without loss or prejudice to the employee.

C. Vacation, sick leave, and leave without pay.

1. Vacation. Vacation leave with pay shall be granted to all regular employees at the rate of $1\frac{1}{2}$ working days for each calendar month of service. Actual working days or parts thereof shall be the basis for computing vacation. Such leave will not be granted to employees while serving a probation period of six months.

Regular employees who have completed the probation period will be entitled to leave accrued during such period at the rate provided above.

Temporary employees in the county departments after six months' service may be granted vacation leave earned during such service, upon the recommendation of the field supervisor and the approval of the state department. Temporary employees in the state department, similarly situated, may be granted vacation leave upon the recommendation of the appropriate division chief and the approval of the state director.

Vacation leave with pay may be accumulated not to exceed twenty-six working days and shall not be granted before earned.

Determination of time at which vacation leave shall be taken by employees in the county department shall be the responsibility of the county director and field supervisor, and in the state department the responsibility of the appropriate division chief and the state director. Vacations shall be arranged so as to avoid as far as possible interruption of the work of the department.

2. Sick leave. Sick leave means absence because of illness or exposure to contagious disease and shall be granted at the rate of $1\frac{1}{2}$ working days for each calendar month of service. Actual working days or parts thereof shall be the basis for computing sick leave. Such leave may be cumulative not to exceed twenty-six working days, not more than five days to be granted in advance of accrual. Temporary employees shall be granted sick leave under the conditions above set out for vacation leave.

The director, State or county, may at any time demand of an employee requesting pay for sick leave a certificate of attending physician. Such certificate shall be required for sick leave in excess of five consecutive days.

3. Leave of absence without pay. Leave of absence without pay may be granted to any employee for a period not to exceed thirty days in case of sickness or physical disability of the employee or a member of his family.

Leave of absence without pay for a definite period of more than thirty days but not to exceed one year may be granted employees at the discretion of the state director. In the case of county departments, such leave granted should be upon the recommendation of the field supervisor.

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All extended leaves of absence without pay should be in writing.

Failure on the part of the employee to return promptly at the expiration of a leave of absence, without satisfactory explanation, shall be considered just cause for dismissal.

XIV. Standards of personnel qualifications. A. General. 1. Knowledge of and adherence to those ethical standards of social work which are the bedrock of successful administration.

2. An established reputation for such mental and social attitudes, habits of conduct, and integrity of character necessary for the exacting responsibilities of the position and for meriting public confidence.

3. No person employed by the state department or any county department shall use his position for the political advancement of himself or any other person. Such activity on the part of any employee shall be considered sufficient cause for his or her discharge.

B. State department. 1. Relationship of employees. No relative within the fourth degree, affinity or consanguinity, of any member of the South Carolina board of public welfare, the state director, or any division head of the state department, shall be eligible for employment by or in the state department.

2. State director. a. College graduate; b. Demonstrated ability for outstanding administrative procedure; c. Executive ability; d. Ability to inspire and retain the confidence of the staff under him, both state and county; e. Such experience as brings with it maturity of judgment, personal dignity, and the ability to use constantly, courtesy, tolerance and tact with all persons. This further implies an ability to analyze difficult situations and to offer sound suggestions. Knowledge, courage and firmness will be needed to administer the social security act.

3. Field supervisor. College graduate. At least one year's training in a professional school of social work or allied fields. At least five years' experience as an executive in a social agency, private or public welfare; at least one year as an executive in a public welfare agency. Those intangible personal qualities that make for successful contacts with both staff and public.

4. Division executives. Same as field supervisor plus experience in special field (old age, blind, child welfare).

5. Field staff. College graduate. At least one year's training in an approved school of social work or six months in a school of social work plus extensive supervisory experience in public welfare work, with demonstrated ability. Proven ability in community organization and interpretation of the program to the general public.

C. County departments. 1. Relationship of employees. No relative within the fourth degree, affinity or consanguinity, of any member of the county board of public welfare, the legislative delegation, or of any county officer, shall be eligible for employment by the state or county welfare board within the county in which the relationship exists. (The term "county officer" as used above shall be construed to mean elected officers only and shall not include any county officer not elected by the people.)

2. County director. a. Graduation from an accredited college, or the equivalent in general cultural background, and experience in fields allied to social work, such as teaching, public health work, group work, etc.

b. A minimum of two years' experience in a case work agency, or public welfare agency, embracing supervisory experience. Demonstrated administrative ability and capacity for growth on the job. Familiarity with the duties of an administrative position.

c. A minimum of 15 semester hours with satisfactory grades in a professional school of social work; an awareness of trends in public welfare development; an interest in further professional study.

d. In lieu of 6 semester hours at a school of social work, additional experience in an agency recognized by the state board of welfare, plus exceptional executive ability, may be accepted.

3. Visitors and case workers. a. Graduation from an accredited college or its equivalent, as cited for county directors.

b. A minimum of one year's experience in a recognized social agency with demonstrated ability to accept supervision, and capacity for growth. Familiarity with the duties of a visitor or case worker.

c. A minimum of 6 semester hours with satisfactory grades in a school of social work. Additional experience in an agency, under competent supervision may be accepted in lieu of 6 semester hours.

d. Ability to drive an automobile should be required.

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D. Accounting, statistical and clerical. 1. Auditors, accountants, and statisticians. a. Graduation from a standard four-year high school or completion of a comparable course of education in other institutions of accredited standing; and five years of full-time paid employment in the respective field—auditing, accounting, statistics; or

b. Four years of college or university training in the respective field and allied subjects; or

c. Any equivalent combination of (a) and (b).

2. Bookkeepers. a. Completion of a standard residence course in bookkeeping and graduation from a standard four-year high school or its equivalent; or

b. Completion of equivalent correspondence course in bookkeeping or accountancy; and 1 year of full time paid employment in a position as bookkeeper.

3. Junior clerk. a. Graduation from a standard four-year high school or the equivalent in education and special experience in work definitely providing familiarity with duplicating machines, filing systems, and modern office practice.

b. (Special abilities). Familiarity with Monroe and Marchant calculating machines, comptometer, addressograph and posting machines.

4. Stenographer, typist, typist clerk. a. Performance, under supervision, of the necessary clerical and stenographic work.

b. Graduation from a standard four year high school or completion of a comparable course of education in other institutions of accredited high school standing, and one year of the required experience, (as defined below); or

In lieu of formal education record, two years of the required experience, (as defined below).

c. Required experience (optional with board). 1. Stenographer. Full time paid employment within the last five years in stenographic work definitely demonstrating the abilities required for the position.

2. Typist. Full time paid employment within the last five years in work involving typing and definitely demonstrating the abilities required for the position.

3. Clerk. Full time paid employment within the last five years in clerical work definitely demonstrating the abilities required for the position.

d. Other requirements. 1. Minimum age—18 years. (Optional with board)

2. Knowledge of:

Modern office practice and procedure including approved methods of filing, usual office equipment, business English and correspondence and simple record keeping.

e. Special abilities. 1. **Stenographer***. Ability to take ordinary prose dictation at a speed of 96 words a minute and to transcribe the notes neatly and accurately on a typewriter in a reasonable length of time.

Ability to understand and follow instructions.

Ability to copy on a typewriter, from printed or typewritten material at a speed of 50 words a minute.

Accuracy in compilation and computation.

Ability to set up rough draft material in typewritten form.

2. **Typist**. Ability to copy on a typewriter, from printed or typewritten material, at a speed of 50 words a minute net.

Ability to set up and copy tabulation neatly and accurately on a typewriter.

Ability to understand and follow instructions.

Ability to set up rough draft material in typewritten form.

3. **Clerk**. Ability to understand and follow instructions.

Accuracy in compilation and computation.

XV. Miscellaneous. A. All employees of the state department and of the several county departments shall give full time service to their respective positions.

B. The state department shall furnish equipment for only one office in a county, which office shall be located in the county seat.

C. Until further action of the state board, the personnel qualifications for employees of county departments shall not be construed so as to require any county board to go outside of its county to employ the necessary personnel.

* If there should be positions classified as senior stenographer or secretary, they should not only meet the requirements listed under stenographer but should have a speed of 120 words per minute in dictation and 60 words net on the typewriter.

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D. Only such persons as are employed by the state department, or by the various county boards with the approval of the state department, shall engage in the work of the departments; provided that this shall not apply to employees furnished to the department by the Works Progress Administration.

Merit System Rule Adopted by South Carolina Department of Public Welfare.

(Filed Secretary of State's office December 17, 1940.)

Article I—Definitions
Article II—Organization of System
Article III—Classification Plan
Article IV—Compensation Plan
Article V—Applications and Examinations
Article VI—Registers
Article VII—Certification of Eligibles
Article VIII—Appointments
Article IX—The Probationary Period
Article X—Changes in Status of Personnel
Article XI—Appeals
Article XII—Attendance and Leave
Article XIII—Efficiency Ratings
Article XIV—Politics and Religion
Article XV—Pay Roll Certification
Article XVI—Applicability
Article XVII—Amendments
Article XVIII—Effective Date

ARTICLE I. DEFINITIONS

The following definitions apply throughout this rule, unless the context clearly requires another meaning.

1. "Agency" means the State Department of Public Welfare and the County Departments of Public Welfare duly constituted as provided by the South Carolina Public Welfare Act.

2. "The State Board" means the South Carolina Board of Public Welfare.

3. "The County Board" means the County Board of Public Welfare.

4. "The State Department" means the State Department of Public Welfare.

5. "The County Department" means the County Department of Public Welfare.

6. "Council" means the Merit System Council of the agency as provided by Article II.

7. "Supervisor" means the Merit System Supervisor as provided by Article II.

8. "Appointing Authority" means the State Director, with approval of the State Board, for employees in the State Department; the County Boards, for employees in the County Departments.

9. "Personnel Officer" means the employee of the State Department immediately responsible for the personnel administration of the agency and whose duties are described in Article II.

10. "Position" means an office or employment in the agency (whether part-time or full-time, temporary or permanent, occupied or vacant) composed of specific duties.

11. "Exempt Position" means a position herein designated as a position exempted from the application of this rule. The exempt positions in the agency are the following: Members of the State Board, Members of County Boards, the State Director, his confidential Secretary, janitors, guides for the blind, and part-time employees rendering any form of professional service, who are not engaged in the performance of administrative duties under the State Plan, and who meet the standards of training and experience established by the responsible State authority.

12. "Class" means a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience, or skill, and such other characteristics, that the same title, the same tests of fitness, and the same schedule of compensation may be applied to each position in the group.

13. "Minimum Qualifications" means the requirements of training and experience, and other qualifications to be measured by written or written and oral examinations, as prescribed for a given class in the agency's classification plans.

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14 "Eligible" means any applicant for a merit examination who receives a final passing rating.

15. "Register" means an officially promulgated list of eligibles for a class of position in the order of their final ratings in a merit examination as described in Article VI.

16. "Employee" means any person in the employ of the agency who is paid a salary or wage.

17. "Original Appointment" means the first appointment of an individual to the agency through selection from a register in accordance with Article VIII, Section 2.

18. "Probationary Period" means the period of employment preceding permanent appointment as described in Article IX.

19. "Permanent Employee" means an employee whose permanent retention has been approved at the completion of a probationary period.

20. "Provisional Appointment" means an appointment to fill a position pending the establishment of a register for such position as described in Article VIII.

21. "Temporary Appointment" means an appointment from a register for a period not to exceed 6 months as described in Article VIII.

22. "Emergency Appointment" means an appointment required by a state of emergency for not more than 60 days as described in Article VIII.

23. "Promotion" means a change in status of an employee, from a position in one class to a position in another class having a higher entrance salary as described in Article X.

24. "Salary Advancement" means an increase in salary within the salary range prescribed for the class by the agency's compensation plans.

25. "Demotion" means a change in status of an employee, from a position in one class to a position in another class having a lower entrance salary as described in Article X.

26. "Transfer" means a change from one position to another in the same class or in another class having the same entrance salary as described in Article X.

27. "Resignation" means the termination of employment of an employee made at the request of the employee.

28. "Dismissal" means the termination of employment of an employee for cause.

29. "Suspension" means an enforced leave of absence for disciplinary purposes or pending investigation of charges made against an employee.

ARTICLE II. ORGANIZATION OF SYSTEM

Section 1. Merit System Council

Paragraph 1. The Merit System Council shall within the scope of the Merit System Rule:

- (1) Establish general policies for the administration of merit examinations and the hearing of personnel appeals
- (2) Hear such appeals or establish impartial bodies to hear appeals on its behalf
- (3) Select and recommend for appointment by the State Director, with the approval of the State Board, a full or part-time Merit System Supervisor and advise with him in formulating procedure for the conduct of merit examinations, and inspect and review his activities for the purpose of assuring conformity with the Merit Rule and Council policies
- (4) Review classification and compensation plans and advise with the State Director on their adoption and subsequent revisions
- (5) To make recommendations to the State Department relative to their internal personnel practices to assure conformity with this rule
- (6) Approve a budget covering costs of Merit System activities provided in the Merit Rule for approval by the State Board
- (7) Promote public understanding of the purposes, policies, and practices of the Merit System
- (8) Review and make written recommendations to the State Director with respect to any amendments to the Merit Rule

As a means of promoting understanding of the purposes, policies, and practices of the Merit System, the Council shall examine into and make a written report to the State Director at least annually on the operation of the Merit System including the conduct of examinations, the establishment of registers, certifications from registers, promotions, salary advancements, dismissals, demotions, transfers and separations, and the maintenance

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of the classification and compensation plans. A copy of this report shall be filed in the State Department and shall be open to public inspection.

Paragraph 2. Members of the Merit System Council are appointed by the State Director, with approval of the State Board, for three-year terms or until successors have been appointed (except that original members were appointed for 1, 2, and 3 years each). The Council shall be composed of three members who shall be public-spirited persons of recognized standing and of known interest in the improvement of public administration and in the impartial selection of efficient government personnel. No member shall have held political office or have been an officer in a political organization during the year preceding his appointment nor shall he hold such office during his term. No member of the Council shall have been an employee of the agency or a member of the State Board or a member of a County Board within one year prior to appointment. Members of the Council shall receive no salary but may be compensated for expenses incurred and travel expense as provided in the approved budget.

Paragraph 3. The Council shall elect a chairman from its membership and also designate the Merit System Supervisor or one of his staff as its recording secretary to keep records of the proceedings of its meetings. Meetings of the Council shall be held as often as necessary and practicable upon call of the chairman or of the agency. The State Department shall have the right to be represented at all meetings of the Council but such representation shall be without voting power. The Council shall adopt procedures for the conduct of its activities.

Section 2. Merit System Supervisor

Paragraph 1. The Merit System Supervisor shall be a person who has had training and experience in merit-system administration or a related field and who has known sympathies in merit system in government service. He shall possess such other qualifications as are required for the performance of his duties. Within one year prior to his appointment, the Supervisor shall not have served as an employee of the agency or as a member of the State Board or a County Board; nor within three years prior to his appointment shall he have held, nor during his term of office shall he hold, political office or office in any political organization.

Paragraph 2. In conformity with the Merit System Rule, the Supervisor shall develop and put into continuous effect policies and procedures for the administration of the Merit System as they relate to the preparation, administration, and scoring of examinations; the preparation, custody and maintenance of registers of eligibles; the determination of availability of eligibles for appointment; the certification for appointments, the determination of the adequacy of existing registers and such other duties as may be prescribed by the Merit Rule or by the Council. The Supervisor, with the approval of the Council, shall establish an office separate and distinct from the offices occupied by the agency; select staff assistants, no member of which shall have been an employee of the agency during the six months preceding appointment; and prepare and submit, with approval of the Council, budget requests to the agency for approval covering all costs of Merit System activities. In selecting personnel, the Supervisor shall insofar as practicable make appointments in conformity with the Merit System Rule.

Section 3. Agency Personnel Officer

Paragraph 1. The Personnel Officer shall be responsible to the State Director for the internal personnel administration of the agency. It shall be his responsibility to develop and put into effect procedures for carrying out the personnel policies of the agency; to participate in the preparation of and to administer the classification and compensation plans; to maintain personnel records of all personnel employed in the agency and records of all personnel actions; to request certifications of eligibles by the Merit System Supervisor; to report to the Supervisor on the selection of eligibles, promotions, salary advancements, demotions, transfers, dismissals, resignations, and all types of appointments; to recommend to the appointing authorities, on the basis of reports received from the supervisory official concerned, the retention or termination of probationary appointees at the close of the probationary period; to provide and administer a system of service ratings; to make a report to the State Director at least annually on the personnel activities of the agency, a copy of which shall be filed with the Council; to notify the Supervisor, as promptly as practicable, regarding vacancies which may occur in the agency; to maintain a record of annual and sick leave on all employees, notifying the supervisors in charge at

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intervals of the amount of accumulations; to certify for payment the semi-monthly personnel salary payrolls for county and state office personnel and to perform such other duties as are prescribed by the Rule or the agency.

Paragraph 2. The point of contact or relationship of the agency with all of its units is through the personnel office and any transaction, pertaining to personnel, between the Merit System Office and any part of the agency is transmitted through the agency's personnel office.

ARTICLE III. CLASSIFICATION PLAN

Section 1. Preparation

The State Department shall maintain a comprehensive classification plan for all positions covered under the merit system. The plan shall be based on investigation and analysis of the duties and responsibilities of each position and each position shall be allocated to its proper class in the classification plan. The plan shall be developed after consultation with supervisory officials, classification specialists, and persons technically familiar with the character of the work. When complete, the classification plan shall include for each class of position an appropriate title, a description of the duties and responsibilities and the minimum requirements of training, experience, and other qualifications.

Section 2. Adoption of Plan

The plan and revisions shall be submitted to the State Board for consideration, approval, and adoption. The Merit System Council may review and make recommendations. Class titles established in the plan shall be used in all personnel and financial records of the agency, as well as in all examination procedures.

Section 3. Revision

Revision of the classification plan may be necessitated at any time by a change in organization or a change in the duties and responsibilities of a position. When the duties and responsibilities of a position change so as not to be similar to other positions in the same class, then it is necessary to reallocate that position to a new class. For this reason job studies or analyses are made at intervals to determine whether the duties and responsibilities of a position have changed. In the interim between job analyses it may be desirable to reorganize the work of a particular office and reallocate some or all positions. A position should be reallocated only when the duties and responsibilities of the position warrant the change in class and not because an employee who is filling the position has qualifications for a higher position. All problems about the classification of a position should be brought to the attention of the Personnel Officer by a written report. Classification and reallocation should be based on an analysis of the position and not the individual who holds the position. Revision of the classification plan is not necessary when a position is reallocated to an existing class. A revision in the plan is necessary when new classes are established or existing classes eliminated.

Section 4. Status of Incumbents in Relation to Reallocated Positions

When a position is reallocated to a different class, the incumbent shall not be deemed eligible to continue in the position unless he would have been eligible for original appointment, promotion, transfer, or demotion to a position of the new class while serving in the position as previously allocated. If ineligible to continue in such position, he may be transferred, promoted, or demoted by appropriate action in accordance with such provision of the Merit Rule as the Supervisor may deem to be applicable. In any case in which the incumbent is ineligible to continue in the position and he is not transferred, promoted, or demoted, the provisions of the Merit Rule regarding separations shall apply.

ARTICLE IV. COMPENSATION PLAN

Section 1. Maintenance of Compensation Plan

The State Department shall formally adopt and make effective a comprehensive compensation plan for all classes of positions. The plan shall include salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications. Initial, intervening, and maximum rates of pay for each class shall be established to provide for steps in salary advancement without change of duty in recognition of meritorious service. In arriving at such salary schedules, prevailing rates in other departments of the State and other relevant factors shall be taken into consideration.

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Section 2. Adoption and Revision

The compensation plan and revisions shall be submitted to the State Board for approval and adoption. The plan shall also be submitted to the Council for review and recommendation.

Section 3. Administration

Paragraph 1. The approved compensation plans shall constitute the official schedules of salaries for all classes of positions in the agency. No salaries shall be approved unless they conform to the approved compensation plans and are at one of the salary levels for the class. The entrance salary for any employee shall be the minimum salary for the class to which he is appointed; provided, that where an employee necessary to efficient administration cannot, after due effort, be secured at the minimum salary for the position involved, with the concurrence of the Merit System Supervisor, a salary at a higher step in the range for such position may be paid. No appointment shall be made at a salary higher than the minimum of the range unless all individuals standing higher on the register are first offered the higher rate. When such an appointment is made, all employees in the same class in the same area shall be at or above the new entrance salary or shall be raised to that salary. Regulations shall provide for necessary salary adjustment affecting employees at the time of adoption or amendment of the compensation plans, or resulting from promotions, demotions, or transfers.

Paragraph 2. Salary advancements shall not be automatic but shall be based upon quality and length of service and shall be controlled by regulations, providing for fixed times for consideration of increases, for limitation of increases to a reasonable proportion of employees, for a reasonable distribution among classes, and for the increases that an individual employee may receive.

ARTICLE V. APPLICATIONS AND EXAMINATIONS

Section 1. Character of Examination

Paragraph 1. Entrance examinations shall be conducted on an open-competitive basis. Examinations shall be practical in nature, shall be constructed to reveal the capacity of the applicant for the particular position for which he is competing as well as his general background and related knowledge and shall be rated objectively. The Supervisor shall obtain the services of qualified experts in the construction of examinations. A practical written test shall be included, except that where peculiar and exceptional qualifications of a scientific or professional nature are required and competition through an assembled examination is impracticable, an unassembled examination may be held. The Supervisor shall determine when competition through an assembled examination is impracticable and shall present satisfactory evidence to the Council for approval.

Paragraph 2. Examinations shall also include a competitive performance test for stenographic and typing positions, and a qualifying performance test for other positions involving the operation of office machines; a rating of training and experience for the more responsible positions including all professional, technical, supervisory, and administrative positions. An oral examination for positions which require frequent contact with the public or which involve important supervisory or administrative duties may be given.

Section 2. Announcement of Examination

The Supervisor shall give public announcement of all entrance examinations at least 3 weeks in advance of the closing date for receipt of applications. He shall make every reasonable effort to attract qualified persons to compete in these examinations. Notice of examinations shall be posted in important centers throughout the State and copies shall be sent to newspapers of state-wide circulation, radio stations, educational institutions, professional and vocational societies, public officials, and such other organizations and individuals as the Supervisor may deem expedient. Public announcement of examinations shall specify the title and salary range of the class of position, information as to the rates of pay at which appointments are expected to be made, the duties to be performed, the minimum qualifications and statutory residence requirements, the final date on which applications will be received, and all other conditions of competition, including the relative weights assigned to the various parts in the examination, the passing grades, and the fact that failure in one part of the examination will disqualify an applicant.

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Section 3. Application for Examination

Paragraph 1. All applications shall be made on forms prescribed by the Council and must be filed with the Supervisor on or prior to the closing date specified in the announcement or postmarked before midnight of that date. Such applications shall include a statement from the applicant of all pertinent information regarding his training, experience, and age, and, in addition, the Supervisor may require a photograph of the applicant, a certificate of his physical fitness from one or more licensed physicians, and any other information which the Supervisor may deem necessary. All applications shall be signed, and the truth of all statements contained therein certified by such signature.

Paragraph 2. In those classes of positions in which there is difficulty in securing qualified eligibles, the Supervisor, with the approval of the Council, may establish a recruitment program which shall be both positive and continuous. Under such a plan applications may be accepted at any time and examinations held whenever applicants have filed in sufficient numbers to assure adequate competition.

Section 4. Disqualification of Applicants

Paragraph 1. Under the supervision and direction of the Council, the Supervisor may refuse to examine an applicant, or, after examination, may disqualify such applicant or remove his name from a register, or refuse to certify an eligible on a register if: (1) he is found to lack any of the preliminary requirements established for the examination for the class of position; (2) he is so disabled as to be rendered unfit for the performance of the duties of the class; (3) he is addicted to the use of narcotics or the habitual use of intoxicating liquors to excess; (4) he has been convicted of any infamous crime or other crime involving moral turpitude; (5) he has made a false statement of material fact in his application; (6) he has previously been dismissed from any public service for delinquency, misconduct, or other similar cause; (7) he has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment; (8) he has directly or indirectly obtained information regarding examinations to which as an applicant he was not entitled; (9) he has failed to submit his application correctly or within the prescribed time limits; (10) he has taken part in the compilation, administration, or correction of the examination; (11) he has otherwise violated provisions of the Merit Rule.

Paragraph 2. A disqualified applicant shall be promptly notified of such action, and an applicant who is not admitted to an examination because of failure to meet the preliminary requirements shall be notified by letter to his last-known address sufficiently in advance of the examination for an appeal from rejection, provided for in Article XI, Section 1.

Section 5. Conduct of Examination

Paragraph 1. Written tests for same class of position shall be conducted simultaneously in as many places as are necessary for the convenience of the applicants and as are practicable for proper administration. The Supervisor may designate such monitors as may be necessary to conduct examinations under instructions prescribed by him, and may also arrange for the use of public buildings in which to conduct the examinations. The Supervisor shall provide for the compensation of monitors in accordance with the approved budget for the purpose.

Paragraph 2. The identity of persons taking competitive assembled examinations shall not be disclosed to the examiners. An identification number, which shall be used to identify all papers of each applicant, shall be assigned by the Supervisor to each applicant. Any examination papers bearing the name of the applicant or identification other than an identification number shall be rejected. In cases of rejection the Supervisor shall promptly notify the applicant.

Section 6. Rating of Examination

Paragraph 1. The Supervisor shall determine a final score for each applicant's examination, computed in accordance with the weights for the several parts established by the Supervisor as set forth in the announcement. Failure in any part of an examination shall disqualify him from participation in subsequent parts of the examination. All applicants for the same position shall be accorded uniform and equal treatment in all phases of the examination procedure.

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Paragraph 2. The Supervisor, with the approval of the Council, shall utilize appropriate scientific techniques and procedures in rating the results of examinations and in determining the final scores of the competitors. In determining the system for rating results on the examinations, the Supervisor and the Council may give due regard to the number of candidates and to the number of vacancies which may reasonably be expected to occur in the life of the register.

Section 7. Rating Training and Experience

If training and experience form a part of the total examination, the Supervisor, with the approval of the Council, shall determine a procedure for the evaluation of the training and experience qualifications of the various applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience, and to the pertinency of the training. This procedure shall allow for the substitution of training for experience, and experience for training, within the limits stated in the class specifications.

Section 8. Investigations

Before rating training and experience or prior to certification from the register, the Supervisor may investigate the applicant's training and experience to verify the statements contained in his application form and to adduce evidence regarding his character and fitness. If this investigation produces information affecting the rating of training and experience, the Supervisor shall rate or rerate the applicant's record accordingly, and make the necessary adjustments in the register. He shall also promptly notify the applicant of such rerating.

Section 9. Oral Examinations

When an oral examination forms part of a total examination for a position, the Supervisor shall, with the approval of the Council, appoint one or more Oral Examination Boards as needed. An Oral Examination Board shall consist of three or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel, and at least one of whom shall be technically familiar with the character of work in the position for which the applicant will be examined. No officer or employee of the agency, nor any person holding political office or any officer or committee member of any political organization, nor any person actively engaged in the work of any political organization, shall serve as a member of any such board. If practicable, all applicants qualifying for the oral examination for the same class shall be rated by the same Oral Examination Board. A member of an Oral Examination Board shall disclose each instance in which he knows the applicant personally and shall not rate such applicant.

Section 10. Notification of Results of Examination

Each applicant passing all parts of the examination shall be notified by mail by the Supervisor of his final rating as soon as the rating of the examination has been completed and the register established. An eligible, upon request and presentation of proper identification, shall be entitled to information concerning his relative position on a register. An applicant who fails any part of the examination or the total examination shall be notified of his failure.

Section 11. Special Examinations

No applicant shall be given a special written examination subsequent to the original examination unless the Council by formal and recorded action finds after investigation that the applicant's failure to take or complete an examination was due to circumstances beyond his control or an obvious error for which the Supervisor or any of his assistants is responsible. The Council's findings and recommendations shall be recorded in its minutes. No claim for a special examination shall be allowed unless it is filed in writing with the Council within 10 days after the date of the original examination. Any special examination shall be constructed on a pattern similar to the original examination.

Section 12. Examination Records

The Supervisor shall be responsible for the maintenance of all records pertinent to the examination program. Applications and other necessary examination records shall be kept during the life of the register. Examination records of appointees shall be kept permanently, but examination records of other applicants, not appointed, may be destroyed 30 days after the register expires. All notices of changes of address shall be filed, by applicants and eligibles, with the Supervisor.

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Section 13. Physical Examinations

Before appointment applicants may be required to pass a satisfactory physical examination.

Section 14. Residence Requirements

By an Act approved May 12, 1947, Section 4996-60 of the South Carolina Public Welfare Act, requiring residence in the State as a condition of eligibility for employment, was repealed.

Section 15. Veterans' Preference

Act number 185, S. C. Acts of 1943, requires preferential treatment in the selection of employees be given to veterans, honorably discharged and having legal S. C. residence; their widows and the wives of disabled veterans. A veteran who has attained the minimum rating under the Merit System shall have five points added to his earned rating. A veteran who sustained in line of duty a disability which exists in a ratable degree under United States Veterans Administration standards of evaluation shall have an additional five points. The appointing officer has the right to determine whether the disability on account of which a veteran is granted the additional five points is of such nature as to render the veteran unemployable. Any appointing officer failing to allow credit for military service or rejecting a veteran and selecting a non-veteran with the same or a lower rating is required to file with the veteran's application a statement outlining his reasons, and to furnish the veteran with a signed copy of such statement.

ARTICLE VI. REGISTERS

Section 1. Establishment

Paragraph 1. After each examination, the Supervisor shall prepare a register of persons with passing grades. The names of such persons shall be placed on the register in the order of their final ratings starting with the highest. If two or more eligibles have final ratings which are identical, their names shall be arranged on the register in order of their ratings on the written part of the examination. If these ratings are identical, their names shall be arranged on the register in the order of date on which their applications are received.

Paragraph 2. *If a vacancy exists in a class of position for which there is no appropriate register, the Supervisor, with the approval of the Council, may prepare an appropriate register for the class from one or more existing related registers. For this purpose the Supervisor shall select registers for classes for which the minimum qualifications and examinations are similar to or higher than those required for the class in which the vacancy exists. The Supervisor may, if necessary, rerate training and experience in accordance with Article V, Section 7 on the basis of the minimum qualifications required for the class in which the vacancy exists.

Section 2. Duration of Registers

Paragraph 1. The life of each register shall normally be 2 years from the date of its establishment, but this period may be reduced or extended by the Supervisor with the approval of the Council. A register may be deemed by the Supervisor to be exhausted if fewer than three available eligibles remain on the register. Upon the exhaustion of a register, or if the Supervisor, with the approval of the Council, reduces the life of a register, he shall notify each eligible remaining on such register to this effect by mail to his last-known address.

Paragraph 2. It shall be the duty of the Personnel Officer to notify the Supervisor as far in advance as possible of vacancies which may occur in the agency. The Supervisor shall be responsible for determining the adequacy of existing registers, and for the establishment and maintenance of appropriate registers for all positions in the agency exclusive of exempt positions.

Section 3. Removal of Names from Registers

Paragraph 1. Under the supervision and direction of the Council, the Supervisor may remove the name of an eligible from a register: (1) for any of the reasons stipulated as disqualifications in Article V, Section 4, Paragraph 1; (2) on evidence that the eligible cannot be located by the postal authorities; (3) on receipt of a statement from the eligible declining an appointment and stating that he no longer desires consideration for the

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position with the agency; (4) if three offers of a probationary appointment to the class for which the register was established have been declined by the eligible.

Paragraph 2. The Supervisor shall notify the eligible by mail to his last-known address of this action and the reasons therefor. An eligible's name shall be reinstated on the register upon showing of cause satisfactory to the Supervisor, or in accordance with a decision of the Council upon appeal, as provided in Article XI, Section 3.

Section 4. Use of Registers of Other Merit Systems

The Council, with the approval of the State Department, may cooperate with other State departments or with Federal or local departments whose merit systems operate in conformity with standards comparable to those contained in the Merit Rule. With the approval of the State Department, the Council may announce and administer joint examinations in conformity with Merit Rule, and the register so established shall be given recognition under the Merit Rule. With the approval of the State Director, the Council may, in the absence of an appropriate register for a particular class of position, recognize an appropriate register for such class of position established under another merit system operating in conformity with these standards, and may accept regular certification from such registers under the Merit System Rule.

ARTICLE VII. CERTIFICATION OF ELIGIBLES

Section 1. Requisition by Agency

When a vacancy occurs in any position in the agency or if new positions are established and new employees needed, requisition stating number of positions to be filled, class title, and all other pertinent information shall be submitted to the Supervisor by the Personnel Officer upon request from the appointing authority.

Section 2. Method of Certification

Paragraph 1. Upon receipt of a requisition, the Supervisor shall certify and submit in writing to the Personnel Officer the names of available eligibles. If one position is involved, he shall certify and submit the names of the three highest available eligibles meeting legal residence requirements from the original register established as a result of a merit examination for that class of position. He shall also, at the same time, certify and submit the three highest available names on the appropriate promotional register, if one exists. If more than one position is involved, he shall, for each class of positions, certify and submit from each of the above described registers a total number of names equal to five times the number of positions to be filled in each class divided by three. Fractions shall be considered as the next whole number. If the original register established as a result of a merit examination for a specific class of position is exhausted, the Supervisor shall certify and submit names in accordance with the above procedure from the appropriate promotional register only, until it is exhausted. If both the original register established as a result of a merit examination for a specific class of position and the appropriate promotional register are exhausted, then the Supervisor, with the approval of the Council, shall certify and submit names in accordance with the above procedure from the register, or registers, most appropriate. If there is no register, or registers, which the Supervisor with the approval of the Council deems appropriate, then the Supervisor may certify and submit in accordance with the above procedure from a register established as described in Article VI, Section 1, Paragraph 2.

Paragraph 2. If an eligible receives a probationary or permanent appointment, such appointment shall constitute, for its duration, a waiver of his right to certification from any other register on which his name appears for a class of position the salary of which is either equal to or lower than that salary covered by his appointment, unless at the time of such appointment he requests in writing that his name be retained for certification from such register or registers.

Paragraph 3. The name of each employee whose name appears on a register for a class of position with a higher salary range than the salary range of his present class of position shall be certified and submitted by the Supervisor, and given consideration by the agency for the higher class of position if his name is reached.

Paragraph 4. If, in the exercise of his choice provided under the Merit System Rule, the appointing authority passes over the name of an eligible on a register in connection with three separate appointments he has made from the register, written request may be

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made of the Supervisor that the name of such eligible be omitted from any subsequent certification to the same appointing authority from the same register. The name of such eligible shall thereafter not be certified to him from that register for future vacancies in that class of position.

Paragraph 5. An eligible may be considered not available by the Supervisor if he fails to reply to a written inquiry after 5 days in addition to the time required for the transmission of the inquiry to his last-known address and reply thereto.

Section 3. County Certification

Eligibles for positions in county departments shall be certified in the same manner as for the State Department, except that in filling a position in a county department the appointing authority, through the Personnel Officer, may request the certification of eligibles who are residents of that county. Upon receipt of such a requisition, the Supervisor shall certify and submit the names of eligibles as provided in Section 2 of this Article, except that the Supervisor shall certify and submit the names of the highest available eligibles who are residents of the county in which the vacancy exists, in accordance with the following procedure: If in certifying and submitting the names of such eligibles for a vacancy in a county department, the Supervisor finds there are fewer than three such eligibles who are residents of that county, he shall certify and submit the names of the one or two such eligibles who are residents; if no appointment is made from these eligibles, or if there is no local eligible, then certification to the vacancy in the county department shall be made from a list of the eligibles in the administrative area in which the county is located; if there are then insufficient eligibles, certification shall be made on a statewide basis.

ARTICLE VIII. APPOINTMENTS

Section 1. Appointing Authority

Paragraph 1. State Office—The appointing authority for the State Office is the State Director having the approval of the State Board.

Paragraph 2. County Offices—The appointing authority for a county office is the County Board which shall act through the County Director, its executive officer.

Section 2. Original Appointments

Paragraph 1. All appointments to positions in the agency exclusive of exempt positions shall be made in accordance with this rule. Selection shall be made for each position from the three highest available names on the certificate, submitted by the Supervisor in accordance with Article VII, exclusive of the names of those persons who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing based on Article V, Section 4, which objection is sustained by the Supervisor with the approval of the Council.

Paragraph 2. In selecting persons from among those certified, the appointing authority shall be permitted to examine their applications and reports of investigations and to interview them. Final selection shall be reported in writing by the Personnel Officer to the Supervisor.

Paragraph 3. If the eligible selected declines the appointment, evidence of declination and other such data shall be transmitted to the Supervisor for permanent record. An eligible may be considered by the Supervisor as having declined appointment if he fails to reply after 5 days in addition to time allowed for transmission of letter or telegram and return of reply. If an eligible accepts an appointment and fails to present himself for duty at the time and place specified, without giving reasons for the delay satisfactory to the appointing authority and the Supervisor, he shall be deemed to have declined appointment.

Section 3. Provisional Appointments

If, in the opinion of the appointing authority, there are urgent reasons for filling a position and there are no eligibles on a register established as a result of an examination for the position, and no appropriate promotional register or other appropriate register exists, the appointing authority may submit to the Personnel Officer the name of a person to fill the position pending examination and establishment of a register. If such person's qualifications have been certified by the Supervisor as meeting the minimum

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qualifications as to training and experience for the position, such person may be provisionally appointed to fill the existing vacancy until an appropriate register is established and appointment made therefrom. No provisional appointment shall be made until the position has been classified and minimum qualifications established therefor in accordance with this rule. Except as provided below, no provisional appointment shall be continued for more than 30 days after an appropriate register has been established for the class of position and in no event for more than 6 months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments. For the duration of the war emergency, provisional appointments may be extended at the end of the 6 months' period with the approval of the Supervisor, and successive provisional appointments of the same individual to different positions and successive provisional appointments to the same position may be made in exceptional circumstances subject to the following situations:

- (a) that an examination has been publicly announced and the Supervisor, with the concurrence of the Council, has found that a sufficient number of applicants has not filed to assure adequate competition.
- (b) that continuous receipt of applications has been provided in accordance with Article V, Section 3, and the examination is to be held whenever the Supervisor, with the concurrence of the Council, finds that enough applicants have filed to assure adequate competition.

When a provisional appointee against probationary status in the position, the period of provisional service shall constitute a part of the probationary period.

Section 4. Emergency Appointments.

Whenever an emergency exists which requires the immediate services of one or more persons and it is not possible to secure such persons from appropriate registers, the appointing authority may appoint a persons or persons without regard to other provisions of the Merit Rule governing appointments. In no case, however, shall the same person be appointed for more than 60 working days during any 12-month period. Each emergency appointment shall, when the appointment is made, be reported in writing by the Personnel Officer to the Merit System Supervisor.

Section 5. Temporary Appointments

If an employee is needed for a temporary period, a certification shall be made by the Supervisor of the names of these eligibles, in the order of their places on an appropriate register, who have indicated willingness to accept temporary employment. Certification shall be made in the manner set forth in Article VII. Appointments shall be made in the same manner as prescribed for probationary appointments. The duration of a temporary appointment shall be limited to the period of the need and in no event shall a temporary appointment continue for more than 6 months in any 12-month period. The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or his eligibility for a probationary appointment, and the period of temporary service shall not constitute a part of a probationary period. Successive temporary appointments to the same position shall not be made nor shall an employee receive continued temporary appointments.

Section 6. Restrictions Against Other Employment

No employee shall hold other public office or have conflicting employment while in the employ of the agency. Determination of such conflict shall be made by the State Director and the Council.

ARTICLE IX. THE PROBATIONARY PERIOD

Section 1. Nature, Purpose and Duration

All original appointments to permanent positions shall be made from officially promulgated registers for a probationary period of six months. The probationary period shall be an essential part of the examination process, and shall be utilized for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. Provided, that with the approval of the Supervisor, in cases where an extension will, in the judgment of the appointing authority, be in the interest of efficient administration, the probationary period may be extended for an additional period of six months but in no case shall the probationary period exceed one year. No more than three employees shall be removed

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successively from the same position during the probationary period without the approval of the Supervisor.

Section 2. Conditions Preliminary to Permanent Appointment

Permanent appointment of a probationary employee shall begin with the date ending the probationary period, provided that the Personnel Officer has received from the employee's supervisor a statement in writing that the services of the employee during the probationary period have been satisfactory and that the employee is recommended to be continued in the service. The statement shall contain an appraisal of the value of the employee's services and shall include a service rating upon a form prescribed by the Personnel Officer. It shall be the responsibility of the Personnel Officer to obtain such statement with recommendations 4 weeks prior to the end of the probationary period. The Personnel Officer, on the basis of such statement and recommendation, shall make recommendation to the appointing authority, and if it is determined that the services of the employee have been unsatisfactory, the Personnel Officer shall notify the employee in writing at least 15 days in advance of the date his services are to be terminated. An employee whose appointment is to be made permanent shall also be notified. The Personnel Officer shall notify the Merit System Supervisor of the action taken regarding the services of the employee.

ARTICLE X. CHANGES IN STATUS OF PERSONNEL

Section 1. Promotions

Paragraph 1. As far as is practicable, and feasible, a vacancy shall be filled by promotion of a qualified permanent employee based upon individual performance, as evidenced by recorded service ratings, with due consideration for length of service, and upon capacity for the new position. In order to be eligible for promotion, an employee must meet minimum qualifications for the higher position and be certified by the Supervisor after competitive or non-competitive examination.

Paragraph 2.

(a) If it is determined by the State Director to fill vacancies in a particular class of position by promotional competitive examination, such examination shall be given under the direction of the Supervisor. An employee to be eligible to compete for promotion must have permanent status and must meet the minimum qualifications as to training and experience for the class of position. A promotional competitive examination shall consist of a combination of any of the following: written tests, ratings on training and experience, evaluation of recorded service ratings and seniority, performance tests, and oral examinations. The combination in each case and procedures for the determination of the passing grade shall be announced by the Supervisor in advance of the examination, and shall take into consideration approved practices.

(b) All employees who receive a passing grade shall be placed on a promotional register for the class of position in order of their examination ratings.

(c) If a promotional and an original register exist, the same number of names shall be certified from each register in accordance with Article VII. The appointing authority may make his selection from the names submitted from either register, giving such preference to present employees as the good of the service will permit.

Paragraph 3. If it is determined by the State Director to fill a vacancy by a non-competitive examination, an employee proposed for promotion shall be examined by the Supervisor in accordance with Section 1, Paragraph 1 of this Article and if found to qualify for the class shall be so certified by him.

Section 2. Demotion

A permanent employee whose efficiency rating shows that his services are unsatisfactory may be demoted to a position for which he is better qualified provided the Supervisor certifies him for the position. In all such cases the employee shall have the same rights of appeal to the Council as employees who have been dismissed.

Section 3. Transfer

Paragraph 1. An employee may be transferred upon recommendation or approval of the appointing authorities concerned to the same class position in another unit of the agency. Also a permanent employee may be transferred upon recommendation or ap-

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proval of appointing authorities concerned to another class having the same entrance salary provided he is certified by the Supervisor as having the minimum qualifications. The Supervisor may also require a qualifying examination.

Paragraph 2. A probationary employee certified from a county register shall not be transferred to another county during probation.

Section 4. Separation

Paragraph 1. Resignation—An employee who resigns shall present the reasons therefor in writing to the appointing authority. A copy of the resignation shall be forwarded to and recorded by the Personnel Officer of the agency.

Paragraph 2. Dismissal for Cause—The appointing authority 15 days after notice in writing to an employee stating specific reasons therefor, may dismiss any employee who is negligent or inefficient in his duties, or unfit to perform his duties; who is found to be guilty of gross misconduct; or who is convicted of any crime involving moral turpitude. Copy of the notice and basis therefor shall be submitted by the appointing authority to the personnel office. When conviction for crime involving moral turpitude is final, the employee shall have no recourse to appeal to the Council.

Paragraph 3. Lay-off—The appointing authority may separate any employee, without prejudice, because of lack of funds or curtailment of work. No permanent employee, however, shall be separated while there are emergency, temporary, provisional, or probationary employees serving in the same class of position in the same organization unit. The order of separation due to reduction of force shall be based upon service ratings and seniority, under a formula to be formally established by the Supervisor and approved by the Council, and all such separations shall be reported to the Supervisor.

Paragraph 4. Suspension—The appointing authority may, after written notice to the employee, copy of which shall be filed in the personnel office, suspend an employee without pay for delinquency or misconduct, for a period not to exceed 30 calendar days in any one calendar year.

Section 5. Reinstatement

Paragraph 1. To Employment—A permanent employee who has resigned, while in good standing, or who has been separated without prejudice, shall be eligible for reinstatement within a period of time equivalent to the continuous period of his service in the agency, provided he has been certified by the Supervisor as meeting the current minimum qualifications as to training and experience of the class of position to which he is being appointed. Prior to making such certification, the Supervisor may require such employee to pass a qualifying examination.

Paragraph 2. To Merit System Register—Upon written request to the Supervisor, the name of a permanent or probationary employee who has resigned while in good standing or who has been separated without prejudice may, at the discretion of the Supervisor, be reinstated to the register from which his most recent appointment was made. If the register from which his most recent appointment was made has expired and if a new register is established for the same class of position as that held by such employee within one year of the date of such resignation or separation, the employee's name may be placed on this new register as nearly as possible in such a position as would cause his name to be preceded by the same proportion of names on the new register as originally promulgated as it was on the old register, from which his most recent appointment was made, when originally promulgated.

Section 6. Tenure of Office

The tenure of office of every permanent employee shall be during good behavior and the satisfactory performance of his duties as recorded by his service rating. This provision, however, shall not be interpreted to prevent the separation of an employee for cause, or the separation of an employee because of lack of funds or curtailment of work, when made in accordance with this rule.

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ARTICLE XI. APPEALS

Section 1. Examination Rejection

Any applicant whose application for admission to an entrance or promotional examination has been rejected by the Supervisor may appeal to the Council for consideration of his qualifications. The Council shall consider such appeal, if in writing, provided it shall have been received by the Supervisor not later than 48 hours prior to the announced time for holding the written examination. The Council's decision with respect to any such appeal shall be final. Applicants may be admitted to an examination by the Supervisor pending a consideration of a written appeal. Admission to a written examination under such circumstances, however, shall not constitute the assurance of a passing grade in training and experience.

Section 2. Examination Ratings

Any applicant who has taken an examination may appeal to the Council for review of his rating in any part of such examination to assure that uniform rating procedures have been applied equally and fairly. Such appeal must be filed in writing at the office of the Supervisor within 30 days after the date on which notification of the results of such examination was mailed to the applicant. A rating in any part of the examination shall not be changed unless compliance with the foregoing conditions has been made and unless it is found by the Supervisor and the Council that a substantial error has been made. The Council's decision with respect to a review or change shall be final and shall be entered in its minutes. A correction in the rating shall not affect a certification or appointment which may have already been made from the register.

Section 3. Removal from Register

An eligible whose name has been removed from a register for any of the reasons specified in Article VI, Section 3, Paragraph 1 may appeal to the Council for reconsideration. Such appeal must be filed in writing at the office of the Supervisor within 30 days after the date on which notification was mailed to the applicant. The Supervisor shall refer the appeal with all pertinent information to the Council. The Council, after investigation, shall make its decision and the eligible shall be notified accordingly by the Supervisor.

Section 4. Dismissal, Suspension, Demotion

Paragraph 1. A permanent employee who is dismissed, suspended, or demoted shall have the right to appeal to the Council not later than 30 days after the effective date of the dismissal, suspension, or demotion. Such appeal shall be in writing and shall be transmitted to the Supervisor who shall arrange a formal hearing before the Council within 10 days after receipt of the appeal. The Supervisor shall furnish the Personnel Officer with a copy of the appeal in advance of the hearing. Both the employee and his immediate supervisor shall be notified reasonably in advance of the hearing and shall have the right to present witnesses and give evidence before the Council.

Paragraph 2. The Council, within 3 days after the hearing, shall make its recommendations in writing to the appointing authority.

Paragraph 3. After consideration of the Council's recommendations, the State Director shall make his decision which shall be final and which shall be duly recorded in the permanent records of the agency. The Personnel Officer shall, in writing, promptly notify the employee of the agency's decision.

ARTICLE XII. ATTENDANCE AND LEAVE

The State Department shall adopt regulations covering attendance, vacation, sick leave, and other types of leave.

ARTICLE XIII. EFFICIENCY RATINGS

The Personnel Officer shall establish and make effective a system of efficiency ratings designed to give a fair evaluation of the quality and quantity of work performed. Such ratings shall be prepared and recorded for all permanent employees at regular intervals not to exceed 1 year. Efficiency ratings shall be considered in determining salary advancements and in making promotions, demotions, dismissals, and in determining the order

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of separations due to reduction of force. An employee shall be notified of his service rating in writing by the Personnel Officer.

ARTICLE XIV. POLITICS AND RELIGION

Section 1. No Interference with Elections

No employee of the State Department, of a County Department, or of the Council, except those hereinbefore exempted, shall (a) participate in political activity except that any employee shall have the right to express his views as an individual citizen and to cast his vote; (b) take an active part in political management or in political campaigns; (c) engage in political activity in city, county, state, or National elections, either primary or general, in behalf of any party or candidate; (d) solicit or receive or be concerned in soliciting or receiving any money or contribution for political purposes; (e) be discharged or demoted for refusing to make any contribution for political purposes.

Section 2. No Disclosures or Discriminations

No question in any form of application or in any examination shall be framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be disregarded. No discriminations shall be exercised, threatened, or promised by any person in the employ of the agency or Council against or in favor of any applicant, eligible, or employee because of his political or religious opinions or affiliations.

Section 3. Recommendations Not Considered

No recommendation of any applicant, eligible, or employee involving disclosure of his political or religious opinions or affiliations shall be considered or filed by the agency, the county, or any officer or employee concerned in making appointments or promotions.

ARTICLE XV. PAY ROLL CERTIFICATION

The State Department shall adopt a plan providing for the certification of the pay rolls by the Supervisor. Such plans shall provide for a review of the pay roll for conformity with provisions of this rule, not less than once each quarter.

ARTICLE XVI. APPLICABILITY

All positions, other than those hereinbefore exempted in Article I, definition 11, authorized in the administration of the Public Welfare laws shall be filled by persons selected on the basis of merit in accordance with this rule. This rule shall apply to all personnel of the State and County Departments of Public Welfare.

ARTICLE XVII. AMENDMENTS

If and when it appears desirable in the interest of good administration, the agency with the advice and recommendation of the Council may make additions to or amend this rule.

ARTICLE XVIII. EFFECTIVE DATE

The effective date of this rule as originally promulgated is June 18, 1940.

Note: Copy of South Carolina's Plan for Vocational Rehabilitation of the Blind was filed in the office of the Secretary of State March 17, 1944.

Wild Life Resources Commission, State.

ADOPTED BY THE SOUTH CAROLINA STATE BOARD OF FISHERIES.

Pursuant to § 28-174, S. C. Code of 1952.

(Filed Secretary of State's office July 8, 1948.)

1. All licensed dealers in shrimp shall send in to the Board monthly reports by the fifth day of each month covering their operations.

2. No trawling or dragging with any device within the Streams, Bays, Sounds or Rivers

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of this State will be permitted, and anyone caught doing so will forfeit his license if he has same. Those not having license will be prosecuted for fishing without a license.

(Following rules filed Secretary of State's office August 15, 1951.)

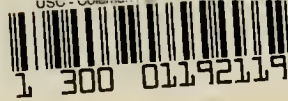
3. All licensed dealers in shrimp or prawn shall keep records showing the name of each person from whom he has purchased shrimp together with the date of purchase and the quantity purchased. These records to be open for inspection by any representative of the Board of Fisheries at all times. Failure to produce records shall be punishable by a fine not to exceed forfeiture of license.

4. Any dealer in seafoods in this State licensed by the State Board of Fisheries shall upon request by any representative of the State Board of Fisheries produce records of the seafoods handled by him showing date of purchase and quantity and from whom purchased. Failure to produce such records shall be punishable by forfeiture of license.

5. A copy of the application for shrimp boat license under Code Section 3379 be filed with the Secretary of State and that any violation by not notifying the Board of Fisheries of change of master under Code Section 3379 [§ 28-944, S. C. Code of 1952] and agreement signed by applicant shall be punishable by forfeiture of license.

6. During the months of January and February trawling for crabs will be permitted within the three-mile limit and in sounds and bays with 5" mesh nets. The trawling in rivers and creeks *will not be permitted*. Sections 28-861 to 28-863, S. C. Code of 1952 prohibit the trawling for shrimp during these two months and in any bay, sound, river, and creek, and those trawling for crabs *will not be permitted* to catch shrimp during those two months nor will boats be allowed to trawl for crabs with shrimp nets on board during those two months. License on trawl boats will be issued the same as was done for shrimp boats, but for the entire year of 1952 instead of just the shrimp season, with a \$5.00 crab net license for January and February, and when the shrimp season opens a \$5.00 license will be sold for shrimp nets but the boat license will be good for the entire year.

(Filed in office of Secretary of State January 7, 1952.)



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